

DIVISION 5. OCCUPATIONAL LICENSING AND BUSINESS REGULATIONS

CHAPTER 1. DRIVING SCHOOLS AND DRIVING INSTRUCTORS

License Required

11100. (a) No person shall own or operate a driving school or give driving instruction for compensation, unless a license therefor has been secured from the department.

(b) This section does not apply to the ownership or operation of any school, or the giving of instruction, for the driving of motortrucks of three or more axles which are more than 6,000 pounds unladen weight.

Amended Ch. 1399, Stats. 1988. Effective January 1, 1989.

All-Terrain Vehicle Safety Instruction

11100.1. No person who instructs others in the operation of all-terrain vehicles shall represent that the instruction given satisfies the requirements of Sections 38503 and 38504, and no certificate shall be issued or awarded for participation in all-terrain vehicle safety instruction unless the instruction is conducted by a licensed all-terrain vehicle safety instructor who is sponsored by an all-terrain vehicle safety training organization.

This section shall become operative on July 1, 1988.

Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Certification by Department of Education

11100.5. Whenever it is necessary for a driving school or independent driving instructor to be certified by the Department of Education, or any agency thereof, in order to participate in any state or federal program directed at training or retraining persons in occupational skills, licensing or certification by the Department of Motor Vehicles pursuant to this chapter may operate to fully qualify such school or instructor to participate in the program.

Costs incurred by the department in exercising its functions pursuant to this section shall be borne by the applicant for licensing or certification, and the department may charge the applicant a reasonable fee therefor.

Added Ch. 1957, Stats. 1965. Effective September 17, 1965.

Schools and Persons Exempt

11101. (a) The provisions of this chapter shall not apply to any of the following:

(1) Public schools or educational institutions in which driving instruction is part of the curriculum.

(2) Nonprofit public service organizations offering instruction without a tuition fee.

(3) Nonprofit organizations engaged exclusively in giving off-the-highway instruction in the operation of motorcycles, if the course of instruction is approved by the National Highway Traffic Safety Administration and is not designed to prepare students for examination by the department for a class 4 drivers license.

(4) Commercial schools giving only off-the-highway instruction in the operation of special construction equipment, as defined in this code.

(5) Vehicle dealers or their salesmen giving instruction without charge to purchasers of motor vehicles.

(6) Employers giving instruction to their employees.

(7) Commercial schools engaged exclusively in giving off-the-highway instruction in the operation of racing vehicles or in advanced driving skills to persons holding valid drivers' licenses, except whenever such instruction is

given to persons who are being prepared for examination by the department for any class of driver's license.

(b) For purposes of this section, "racing vehicle" means a motor vehicle of a type which is used exclusively in a contest of speed and which is not intended for use on the highways.

(c) (1) Nothing in this chapter shall be construed to direct or restrict courses of instruction in driver education offered by private secondary schools or to require the use of credentialed or certified instructors in driver education courses offered by private secondary schools.

(2) For the purposes of this section, private secondary schools are those subject to the provisions of Sections 33190 and 48222 of the Education Code.

(d) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

Amended Ch. 499, Stats. 1984. Effective January 1, 1985.

Added and repealed Sec. 2, Ch. 774, Stats. 2002. Effective September 20, 2002. Repeal operative January 1, 2005.

The 2002 amendment added the italicized material.

NOTE: The preceding section becomes inoperative on July 1, 2004, at which time the following section becomes operative.

11101. (a) *The provisions of this chapter shall not apply to any of the following:*

(1) Public schools or educational institutions in which driving instruction is part of the curriculum.

(2) Nonprofit public service organizations offering instruction without a tuition fee.

(3) Nonprofit organizations engaged exclusively in giving off-the-highway instruction in the operation of motorcycles, if the course of instruction is approved by the National Highway Traffic Safety Administration and is not designed to prepare students for examination by the department for a class 4 drivers license.

(4) Commercial schools giving only off-the-highway instruction in the operation of special construction equipment, as defined in this code.

(5) Vehicle dealers or their salesmen giving instruction without charge to purchasers of motor vehicles.

(6) Employers giving instruction to their employees.

(7) Commercial schools engaged exclusively in giving off-the-highway instruction in the operation of racing vehicles or in advanced driving skills to persons holding valid drivers' licenses, except whenever such instruction is given to persons who are being prepared for examination by the department for any class of driver's license.

(b) For purposes of this section, "racing vehicle" means a motor vehicle of a type which is used exclusively in a contest of speed and which is not intended for use on the highways.

(c) This section shall become operative on July 1, 2004.

Added Sec. 2.5, Ch. 774, Stats. 2002. Effective September 20, 2002. Operative July 1, 2004.

Requirements for Driving School Owner or Principal in All-Terrain Vehicle Safety Training Organization

11102. (a) A driving school owner, or the principal in an all-terrain vehicle safety training organization, shall meet all of the following

requirements:

(1) Maintain an established place of business open to the public. No office or place of business shall be situated within 500 feet of any building used by the department as an office, unless the owner was established at that location on or before January 1, 1976.

(2) Have the proper equipment necessary to give instruction in the operation of the class of vehicles for which the course is designed which shall include, but not be limited to, training vehicles equipped with all of the following:

(A) An additional functional foot brake affixed to the right side of the front floor.

(B) A rearview mirror placed on the inside of the windshield on the right side, which is additional to the factory-installed mirror in the center of the windshield.

(3) Procure and file with the department a bond of ten thousand dollars (\$10,000) executed by an admitted surety insurer and conditioned that the applicant shall not practice any fraud or make any fraudulent representation that will cause a monetary loss to a person taking instruction from the applicant.

(4) Meet the requirements of Section 11105.2 and, if the person is the owner of a driving school, meet the requirements of Section 11102.5. If the owner is not the operator of the driving school, the owner shall designate an operator who shall meet the requirements of Section 11102.5.

(5) (A) File with the department an instrument, in writing, appointing the director as the agent of the applicant upon whom a process may be served in any action commenced against the applicant arising out of any claim for damages suffered by any person by the applicant's violation of any provision of this code or any condition of the bond.

(B) The applicant shall stipulate in the instrument that any process directed to the applicant, when personal service cannot be made in this state after due diligence, may be served upon the director or, if the director is absent from the office, upon any employee in charge of the office of the director, in which case the service is of the same effect as if served upon the applicant personally. The applicant shall further stipulate, in writing, that the agency created by the instrument shall continue during the period covered by the license and so long thereafter as the applicant may be bonded to answer in damages for a violation of this code or any condition of the bond.

(C) The instrument appointing the director as agent for the applicant for service of process shall be acknowledged by the applicant before a notary public.

(D) If the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars (\$5) shall also be paid to the director at the time of service of the copy of the summons and complaint.

(E) The service on the director is a sufficient service on the licensee if the plaintiff or the plaintiff's attorney also, on the same day, sends notice of the service and a copy of the summons and complaint by registered mail to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or his or her attorney to the surety of the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt.

(F) The director shall keep a record of all process served upon the director under this paragraph showing the day and hour of service, and the director shall retain the summons and complaint served on file.

(G) If the licensee is served with process by service thereof upon the director, the licensee has 30 days after that service within which to answer any complaint or other pleading filed in the cause. For purposes of venue, if the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had the licensee's established place of business.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

Amended Sec. 1, Ch. 243, Stats. 2000. Effective January 1, 2001.

Refund of Cash Deposit or Release of Bond upon Cessation of Business

11102.1. If a deposit is given instead of the bond required by Section 11102:

(a) The director may order the deposit returned at the expiration of three years from the date a driving school licensee has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a () superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(b) If either the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

Amended Sec. 597, Ch. 784, Stats. 2002. Effective January 1, 2003.

The 2002 amendment at the point(s) indicated, deleted the following "municipal or"

Requirements for Driving School Operators

11102.5. (a) A driving school operator shall meet all of the following requirements:

(1) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, teaching methods and techniques, driving school statutes and regulations, and office procedures and recordkeeping.

(2) Pay the department a fee of one hundred dollars (\$100), which shall entitle the applicant to three examinations.

(3) Be 21 years of age or older.

(4) Have worked for an established licensed California driving school as a driving instructor for a period of not less than 2,000 hours of actual behind-the-wheel teaching and, on and after July 1, 1973, have satisfactorily completed a course in the teaching of driver education and driver training acceptable to the department, except that the operator, including an owner who is also the operator, of a driving school that exclusively teaches motorcycle driving may, in lieu of the behind-the-wheel teaching requirement, have worked for an established licensed California driving school as a motorcycle driving instructor for not less than 300 hours of actual motorcycle range and street teaching, have taught 300 hours of actual motorcycle range and street instruction under the guidance of the Motorcycle Safety Foundation, or have given comparable training instruction that is acceptable to the department. This paragraph does not apply to any person who is certified by the State Department of Education as fully qualified to teach driver education and driver training and has taught those subjects in

the public school system for not less than 1,000 hours.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

Amended Sec. 2, Ch. 243, Stats. 2000. Effective January 1, 2001.

Insurance Requirements: Driving School or Independent Instructor

11103. A driving school owner and an independent instructor licensed under Section 11105.5 shall maintain bodily injury and property damage liability insurance on motor vehicles while being used in driving instruction, insuring the liability of the driving school, the driving instructor, and any person taking instruction in at least the following amounts: one hundred fifty thousand dollars (\$150,000) for bodily injury to or death of one person in any one accident and, subject to the limit for one person, three hundred thousand dollars (\$300,000) for bodily injury to or death of two or more persons in any one accident, and the amount of fifty thousand dollars (\$50,000) for damage to property of others in any one accident.

The owner or instructor shall file evidence of that insurance coverage in the form of a certificate from the insurance carrier with the department, and the certificate shall stipulate that the insurance shall not be canceled except upon 30 days' prior written notice to the department.

Amended Ch. 403, Stats. 1986. Effective January 1, 1987.

Insurance Requirements: All-Terrain Vehicle Safety Training Organization

11103.1. An all-terrain vehicle safety training organization shall maintain bodily injury and property damage liability insurance on motor vehicles while being used in all-terrain vehicle safety instruction, insuring the liability of the organization, the instructors, and any person taking instruction in at least the following amounts:

(a) One hundred fifty thousand dollars (\$150,000) for bodily injury to or death of one person in any one accident.

(b) Subject to the limit specified in paragraph (1) for one person, three hundred thousand dollars (\$300,000) for bodily injury to or death of two or more persons in any one accident.

(c) Fifty thousand dollars (\$50,000) for damage to property of others in any one accident.

This section shall become operative on July 1, 1988.

Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Workers' Compensation Requirements: Driving School Owner

11103.2. A driving school owner who employs one or more driving instructors or other employees shall sign, under penalty of perjury, a statement in a form determined and retained by the department stating that the owner is in compliance with worker's compensation requirements set forth in Section 3700 of the Labor Code.

Added Sec. 1, Ch. 47, Stats. 1996. Effective January 1, 1997.

Requirements for Driving Instructor

11104. (a) Every person, in order to qualify as a driving instructor, as defined in Section 310.4, shall meet all of the following requirements:

(1) On and after July 1, 1973, have a high school education or its equivalent and have satisfactorily completed a course in the teaching of driver education and driver training acceptable to the department.

(2) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, and teaching methods and techniques.

(3) Be physically able to safely operate a motor vehicle and to train others in the operation of motor vehicles.

(4) Hold a valid California driver's license in a class appropriate for the type of vehicle in which instruction will be given.

(5) Not be on probation to the department as a negligent operator.

(6) Have a driving record that does not have an outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509.

(7) Be 21 years of age or older.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

Amended Sec. 3, Ch. 243, Stats. 2000. Effective January 1, 2001.

Requirements for All-Terrain Vehicle Safety Instructors

11104.3. (a) An all-terrain vehicle safety instructor shall:

(1) Be a person who has not been convicted of a crime involving an act of dishonesty, fraud, or deceit with the intent to benefit himself or herself or another substantially, or to injure another substantially; or has not committed any act which, if done as an all-terrain vehicle safety instructor, would be grounds for the suspension or revocation of the all-terrain vehicle safety instructor's license. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(2) Have a high school education or its equivalent and have satisfactorily completed a course of instruction training in all-terrain vehicle safety as approved by the Off-Highway Vehicle Safety Education Committee.

(3) Within three attempts, pass the examination that the department requires on off-highway vehicle laws, safe driving practices, operation of all-terrain vehicles, and teaching methods and techniques.

(4) Be physically able to safely operate a motor vehicle and to train others in the operation of all-terrain vehicles.

(5) Hold a valid driver's license issued by this state or any contiguous state.

(6) Not be on probation to the department as a negligent operator or the equivalent of that in the state that issued the driver's license.

(7) Have a driver record which does not have an outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509 or 40509.5 or as provided in equivalent statutes in the state that issued the driver's license.

(8) Be 18 years of age or older.

(9) Be sponsored by an all-terrain vehicle safety training organization.

(b) The qualifying requirements in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991. Supersedes Ch. 1460.

Application for License

11104.5. Each applicant for a license as a driving school owner, driving school operator, or driving instructor shall submit an application to the department on the forms prescribed by the department. The applicant shall provide the department with any information concerning the applicant's character, honesty, integrity, and reputation which the department may consider necessary.

Added Ch. 75, Stats. 1987. Effective January 1, 1988.

Application for License

11104.6. Each applicant for a license or for renewal of a license under

this chapter shall submit an application to the department on the forms prescribed by the department. The applicant shall provide the department any information concerning the applicant's character, honesty, integrity, and reputation which the department considers to be necessary.

This section shall become operative on July 1, 1988.

Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Issuance and Renewal of Licenses: Owner or Operator

11105. (a) The department shall issue a license certificate to each driving school owner and to each driving school operator when it is satisfied that the owner has met the qualifications required under this chapter. The license shall be for a period of one year from midnight of the last day of the month of issuance unless canceled, suspended, or revoked by the department.

(b) The license shall be renewed annually. The department shall require all of the following for the renewal of the license:

(1) Compliance with the provisions of Sections 11102 and 11105.2 for renewal of a driving school owner's license or Section 11102.5, except paragraph (2) of subdivision (a) of Section 11102.5, for renewal of a driving school operator's license.

(2) Satisfactory completion of an examination as provided in Section 11102.5 at least once during each succeeding three-year period after the initial issuance of a license certificate.

In lieu of any examination for renewal of the license, the department may accept submission by the licensee of evidence of continuing professional education. Professional education, as used in this subdivision, means satisfactory completion of courses related to traffic safety, teaching techniques, or the teaching of driver instruction acceptable to the department or participation in professional seminars approved by the department.

(c) The department may issue a probationary license and certificate subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license or certificate but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

(d) Upon notification of death of a driving school licensee the department may issue a certificate of convenience to the executor, executrix, administrator or administratrix of the estate of a deceased holder of a validly outstanding certificate to conduct a driving school, or if no executor, executrix, administrator or administratrix has been appointed, and until a certified copy of an order making such appointment is filed with the department, to the surviving spouse or other heir otherwise entitled to conduct the business of the deceased, permitting such person to conduct the driving school for a period of one year from and after the date of death, and necessary one-year renewals thereafter pending, but not later than, disposal of the business and qualification of the vendee of the business or such surviving spouse or heir for a license certificate to conduct a driving school under the provisions of this division. The department may restrict or condition the certificate and attach to the exercise of the privilege thereunder such terms and conditions as in its judgment the protection of the public requires.

(e) The department shall not issue or renew a license certificate unless it determines that the driving school owner has complied with Section 11103.2.

Amended Sec. 2, Ch. 47, Stats. 1996. Effective January 1, 1997.

Issuances and Renewal of Licenses: Instructor

11105.1. (a) The department shall issue a license certificate to each driving school instructor and to each all-terrain vehicle safety instructor when it is satisfied that the person has met the qualifications required under this chapter. The original instructor's license and any instructor's license renewed pursuant to subdivisions (b) and (c) is valid for three years from the date issued unless canceled, suspended, or revoked by the department.

(b) A licensee may apply for the renewal of an instructor's license prior to the expiration date of the license. In no event shall an instructor renew the license after the date of expiration.

(c) The department shall require all of the following for the renewal of the instructor's license:

(1) Compliance with Section 11104, except subdivision (c) thereof, for a driving school instructor, or compliance with Section 11104.3, except paragraph (3) of subdivision (a) thereof, for an all-terrain vehicle safety instructor, and, for either, compliance with Section 11105.2.

(2) Satisfactory completion of an examination as provided in Section 11104 or 11104.3, as applicable, at least once during each succeeding three-year period after the initial issuance of an instructor license certificate.

In lieu of any examination for renewal of the license, the department may accept submission by the licensee of evidence of continuing professional education as defined in paragraph (2) of subdivision (b) of Section 11105.

(d) The department may issue a probationary instructor's license and certificate subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license or certificate, but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

(e) This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Fees

11105.2. (a) The fee for a license issued to a driving school owner or to an all-terrain vehicle safety training organization shall be as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred fifty dollars (\$150).

(2) For the annual renewal of a license, a fee of fifty dollars (\$50).

(3) If an alteration of an existing license is caused by a firm name change, a change in corporate officer structure, address change, or the addition of a branch location, a fee of seventy dollars (\$70).

(4) For replacement of the license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars (\$15).

(b) The fee for a license issued to a driving school operator shall be as follows:

(1) For the original license a nonrefundable fee of one hundred dollars (\$100).

(2) For the annual renewal of a license, a fee of one hundred dollars (\$100).

(3) If an alteration of an existing license is caused by a change in school name or location, or the addition of a branch location, a fee of fifteen dollars (\$15).

(4) For replacement of the license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars (\$15).

(c) The fee for a license issued to a driving school instructor or to an all-terrain vehicle safety instructor shall be as follows:

(1) For the original license, except as provided by Section 42231, a nonrefundable fee of thirty dollars (\$30).

(2) For the triennial renewal of a license, a fee of thirty dollars (\$30).

(3) If an alteration of an existing license is caused by a change in the instructor's employing school's name or location, or transfer of the instructor's license to another employing school, a fee of fifteen dollars (\$15).

(4) For the replacement of the instructor's license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars (\$15).

(d) This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Expired License: Reapplication

11105.3. Any school owner, operator, or instructor required to be licensed under this chapter who fails to renew the license prior to the expiration of the license in accordance with Sections 11105 and 11105.1 and whose license was not canceled, suspended, or revoked by the department at the time of expiration, may reapply for an original license pursuant to Section 11102, 11102.5, 11104, or 11104.3.

This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Independent Driving Instructor

11105.5. The department shall issue an independent driving instructor's license to permit instruction in any city with a population of less than 50,000, which does not have within it an established licensed driving school, to any person who meets the requirements of this chapter relating to instructor's and independent instructor's licenses, even though such person is not an employee of, or otherwise associated with or instructing through, a driving school, except that no independent driving instructor's license shall be issued to a person to instruct in counties with a population in excess of 400,000. In addition, an independent instructor must at all times be employed as an accredited teacher of automobile driver education or automobile driver training under the provisions of the Education Code.

Amended Ch. 438, Stats. 1971. Operative May 3, 1972.

All-Terrain Vehicle Safety Training Organization: License

11105.6. (a) The department shall issue a license to an all-terrain vehicle safety training organization when the department is satisfied that the organization has met the qualifications required under this chapter and has been approved and certified by the Off-Highway Vehicle Safety Education Committee. The license shall be valid for a period of one year from midnight of the last day of the month of issuance unless canceled, suspended, or revoked by the department.

(b) The license shall be renewed annually. The department shall require compliance with Sections 11102 and 11105.2 for the renewal of the license.

(c) This section shall become operative on July 1, 1988.

Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Temporary Permit

11106. (a) Until the department is satisfied that the applicant has met the requirements under this chapter, it may issue a temporary permit to any person applying for a license issued pursuant to this chapter. The temporary permit authorizes the operation of a school or the giving of instruction for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of

the applicant for the license.

(b) A temporary permit valid for 30 days may be issued to any applicant for an original instructor's license pending satisfactory completion of the course required by subdivision (b) of Section 11104 or paragraph 2 of subdivision (a) of Section 11104.3, as applicable. This subdivision does not extend the period of validity of any temporary permit issued pursuant to subdivision (a).

(c) The department may cancel a temporary permit when it has determined, or has reasonable cause to believe, that the application is incorrect or incomplete or the temporary permit was issued in error. A temporary permit is invalid when canceled or when the applicant's license has been issued or refused.

(d) This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Refusal to Issue License

11107. (a) The department may refuse to issue a license certificate under this chapter to any applicant to own or operate a school or to any instructor when it finds and determines any of the following to exist:

(1) The applicant has not met the qualifications required under this chapter.

(2) The applicant was previously the holder of a license under this chapter which was revoked or suspended, which was never reissued by the department after revocation, or which was never reinstated after suspension.

(3) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(4) The applicant has done any act or series of acts which would be a cause for suspension or revocation under Section 11110.

(5) If the applicant is a business, a business representative was the holder of a revoked or suspended license previously issued under this chapter which was never reissued after revocation or which was never reinstated after suspension, or a business representative, though not previously the holder of a license, has done any act or series of acts which would be a cause for revocation or suspension under Section 11110.

(6) By reason of the facts and circumstances relating to the organization, control, and management of the business, it is likely that the policy or operation of the business will be directed, controlled, or managed by a business representative who, by reason of any act, series of acts, or conduct described in paragraph (4) or (5), would be ineligible for a license and that, by licensing the business, the purposes of this division would be defeated.

(7) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license.

(8) The applicant, or one of the business representatives if the applicant is a business, has been convicted of a crime, or has committed any act or engaged in conduct involving moral turpitude, which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) Upon refusal of the department to issue a license, the applicant may demand, in writing, a hearing before the director or the director's representative within 60 days after notice of refusal.

The hearing shall be conducted pursuant to Chapter 5 (commencing with

Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked, or whose application for a license has been refused, may reapply for the license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

Amended Sec. 42, Ch. 877, Stats. 1998. Effective January 1, 1999.

Records of Licensee

11108. (a) Every person licensed under this chapter shall keep a record showing all of the following:

- (1) The name and address and license number of the school.
- (2) The name and address of each person given instruction.
- (3) Excepting all-terrain vehicle safety training organizations, the instruction permit number or driver's license number of every person given instruction in the driving of a motor vehicle.
- (4) Excepting all-terrain vehicle safety training organizations, the date any instruction permit was issued.

- (5) The name and instructor's license number of each instructor.
- (6) The particular type of instruction given and the date of the instruction.

- (7) The amount of time devoted to each type of instruction.
- (8) The total number of hours of instruction.
- (9) The total cost to the student of the instruction.

(b) The records shall be retained for at least three years and shall be open to the inspection of the department at all reasonable times, but shall be only for the confidential use of the department.

(c) Whenever the licensee suspends or terminates the licensed activity, the licensee shall surrender the records to the department for examination not later than the end of the third day, excluding Saturdays, Sundays, and legal holidays, after the date of suspension or termination. The department may duplicate or make a record of any information contained in the licensee's records. All of the licensee's records shall be returned to the licensee not later than 30 days after the date of surrender.

(d) Every all-terrain vehicle safety training organization shall maintain records for all-terrain vehicle safety instructors who are authorized to offer that organization's courses of instruction.

(e) Each all-terrain vehicle safety instructor shall report the information required under this section to the all-terrain vehicle safety training organization no later than the 15th day of the month following the date instruction was provided. Instructors shall notify the organization, which shall, in turn, notify the department at least 30 days in advance of providing a course of instruction, of the time, date, location, and type of instruction to be given.

(f) This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Change of Ownership, Location, or Residence

11108.5. (a) Every school owner licensed pursuant to this chapter shall notify the department within 10 days of any change in the ownership or corporate structure of the licensee.

(b) Every school owner licensed pursuant to this chapter shall immediately notify the department upon changing the site or location of the school's established place of business.

(c) Every school operator and every instructor licensed pursuant to this chapter shall report to the department every change of residence address within five days of the change.

(d) This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Vehicles of Licensee

11109. Every licensee under this chapter shall maintain all vehicles used in driver training in safe mechanical condition at all times.

Revocation and Suspension of Licenses

11110. (a) The department, after notice and hearing, may suspend or revoke any license issued under this chapter if any of the following occur:

(1) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(2) The licensee fails to keep the records required by this chapter.

(3) The licensee (A) permits fraud or engages in fraudulent practices either with reference to an applicant for a driver's license or an all-terrain vehicle safety certificate or the department, or (B) induces or countenances fraud or fraudulent practices on the part of any applicant.

(4) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(5) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe, that the licensee is in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(6) The licensee, or any employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(7) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this paragraph.

(8) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(9) The licensee conducts training, or permits training by any employee, in an unsafe manner or contrary to safe driving practices.

(10) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(11) The licensed school owner does not have in effect a bond as required by Section 11102.

(12) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(13) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for any business licensed pursuant to this Article that is owned by the licensee or for which the licensee is an employee.

(b) In the interest of the public's safety, as determined by the department, the department may immediately suspend the license of any licensee for any alleged violation under this chapter and shall conduct a hearing of the alleged violation within 30 days of the suspension.

Added Ch. 699, Stats. 1994. Effective January 1, 1995. Operative January 1, 1998.
Amended Sec. 2, Ch. 922, Stats. 1996. Effective January 1, 1997. Operative January 1, 1999.
Supersedes Sec. 4, Ch. 47.
Amended Sec. 4, Ch. 243, Stats. 2000. Effective January 1, 2001.

Revocation or Suspension of License: Additional Causes

11110.1. Any of the causes specified in this chapter as a cause for refusal to issue a license under this chapter is cause to suspend or revoke a license under this chapter.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Cancellation of School Owner's License

11110.2. The license issued to a school owner shall be automatically canceled upon the happening of any of the following:

(a) The abandonment of the established place of business or the change thereof without notice to the department pursuant to Section 11108.5.

(b) The failure to maintain an adequate bond or to procure and file another bond, as required by Section 11102, prior to the effective date of the termination by the surety of any existing bond.

(c) The voluntary or involuntary surrender of the license, except that a surrender or cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the department from filing an accusation for revocation or suspension of the surrendered license, as provided in Section 11110, or affect the department's decision to suspend or revoke the license.

(d) Notification to the department that the person designated as licensee has changed.

(e) Suspension or revocation of the corporate status of the licensee.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Cancellation of License When Issued in Error or Surrendered

11110.5. The department may cancel any license issued under this chapter when that license has been issued in error or voluntarily surrendered to the department for cancellation. Whenever a driving school operator's license or an instructor's license is canceled, it shall be without prejudice and shall be surrendered to the department. Any person whose license has been canceled may immediately apply for a license, and the application may be accepted without additional fee or examination under rules and regulations adopted by the department.

This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Interim Refusal to Issue or Suspension of License

11110.7. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or the suspension shall automatically become effective as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or the suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed

the original term of probation for the interim refusal to issue or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the department shall set aside immediately that refusal or suspension.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Notice and Hearing Before Cancellation, Suspension or Revocation of License

11111. (a) Every licensee under this chapter is entitled to notice and hearing prior to cancellation, suspension, or revocation of the license by the department, except that the department shall immediately cancel the license without a hearing for failure of the licensee to meet and maintain the requirements of paragraph (1), (3), or (4) of subdivision (a) of Section 11102, or Section 11103 or 11103.1, or paragraph (4), (5), or (6) of subdivision (a) of Section 11104, or paragraph (4), (5), or (6) of subdivision (a) of Section 11104.3, or Section 11110.2.

(b) The notice and hearings provided for in this chapter shall be pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any action of the department in suspending, canceling, or revoking, or failing to renew a license may be reviewed by any court of competent jurisdiction.

(d) The department may, pending a hearing, temporarily suspend the license or permit of any person licensed under this chapter for not more than 30 days if the director finds that the action is required in the public interest. In that case, a hearing shall be held and a decision issued within 30 days after notice of temporary suspension.

(e) The suspension, expiration, or cancellation of a license issued under this chapter does not preclude the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled license as provided in Section 11110, and does not invalidate or otherwise preclude a decision by the department to suspend or revoke the license. That determination may be considered in granting or refusing to grant any subsequent license authorized by this chapter to the same licensee, or to any partner, officer, director, or stockholder of the same licensee.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Service of Process

11111.2. Any owner licensed under this chapter who has closed his or her established place of business or any operator or instructor currently or previously licensed under this chapter who no longer resides at the address last filed with the department, may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business, in the case of an owner, or at that residence, in the case of an operator or instructor, unless the person has notified the department in writing of another address where service may be made.

Added Ch. 751, Stats. 1988. Effective January 1, 1989.

Filing of Accusation: Compromise Settlement

11111.5. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not

exceed one thousand dollars (\$1,000) for driving school owners or for a principal in an all-terrain vehicle safety training organization or five hundred dollars (\$500) for driving school operators or for driving instructors or all-terrain vehicle safety instructors for each violation, and the monetary penalty shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

(f) This section shall become operative on July 1, 1988.

Repealed and Added Ch. 881, Stats. 1987. Operative July 1, 1988.

Hearings: Refusal to Issue

11112. Upon refusal of the department to issue a license, the applicant shall be entitled to demand in writing a hearing before the director or his representative within 60 days after notice of refusal.

The hearing shall be conducted pursuant to Chapter 5 (commencing at Section 11500), Part 1, Division 3, Title 2 of the Government Code.

Added Ch. 1996, Stats. 1959. Effective September 18, 1959.

Conduct of Courses: Rules and Regulations

11113. (a) The director may prescribe rules and regulations for driving schools regarding the conduct of courses of driver education and driver training, including curriculum, facilities, and equipment. The rules and regulations regarding curriculum shall require both of the following:

(1) A component relating to the dangers involved in consuming alcohol or drugs in connection with the operation of a motor vehicle.

(2) A component examining driver attitude and motivation that focuses on the reduction of future driving violations, with particular emphasis on aggressive driving behavior and behavior commonly known as "road rage."

(b) The director may also prescribe rules and regulations for the conduct of driving instructor training courses required by Sections 11102.5 and 11104, including curriculum, facilities, and equipment. The department shall monitor instruction given by driving schools.

Amended Sec. 2, Ch. 642, Stats. 2000. Effective January 1, 2001.

Additional Curriculum Requirements

11113.3. The rules and regulations adopted pursuant to Section 11113

regarding the curriculum shall include, but are not limited to, the rights and duties of a motorist as they relate to traffic laws and traffic safety.

Added Sec. 5, Ch. 833, Stats. 2000. Effective January 1, 2001.

Standards For Licensing And Control: Rules and Regulations

11113.5. The department shall establish rules and regulations prescribing standards for the licensing and control, as provided in this chapter, of owners, operators, and instructors and the courses of driver education and driver training for driving schools providing training courses for class 1 and class 2 licensed drivers. The standards shall provide for requirements of licensing, training, and control to assure that the owners, operators, and instructors are qualified to provide the type of training needed by drivers for safe operation of large commercial vehicles on the highway.

Added Ch. 387, Stats. 1985. Effective January 1, 1986.

Reexamination

11114. The department may require any person licensed under this chapter to submit to a reexamination of his qualifications when there is reasonable cause to believe that the licensee does not have the ability to give driving instruction. If the licensee refuses or fails to submit to such reexamination, the department may peremptorily suspend his license until such time as the licensee shall have submitted to reexamination. The suspension shall be effective upon notice.

Repealed and added Ch. 703, Stats. 1975. Effective January 1, 1976.

CHAPTER 1.5 TRAFFIC VIOLATOR SCHOOLS

License Required

11200. (a) The department shall license schools for traffic violators for purposes of Section 42005 and to provide traffic safety instruction to other persons who elect to attend. A person may not own or operate a traffic violator school or, except as provided in Section 11206, give instruction for compensation in a traffic violator school without a currently valid license issued by the department.

(b) (1) Any person who elects to attend a traffic violator school shall receive from the traffic violator school and shall sign a copy of the following consumer disclosure statement prior to the payment of the school fee and attending the school: "Course content is limited to traffic violator curricula approved by the Department of Motor Vehicles. Students in the classroom include traffic offenders, repeat traffic offenders, adults, and teenagers, and those who have and those who have not been referred by a court. Instructor training, business regulatory standards, and Vehicle Code requirements of traffic violator schools are not equal to the training, standards, and Vehicle Code requirements of licensed driving schools (California Vehicle Code)."

(2) In the case of a minor who elects to attend a traffic violator school, the minor's parent or guardian shall sign the consumer disclosure statement.

(3) A copy of each signed disclosure statement shall be retained by the traffic violator school for a minimum of 36 months.

(4) This subdivision does not apply to persons referred by courts pursuant to Section 42005.

Amended Sec. 2, Ch. 457, Stats. 2001. Effective January 1, 2002.

Requirements For Traffic Violator School Owners

11202. (a) Except as provided in subdivision (c), a traffic violator school owner shall meet all of the following criteria before a license may be issued for the traffic violator school:

(1) Maintain an established place of business in this state which is open

to the public. No office or place of business of a traffic violator school, including any traffic violator school branch or classroom location, may be situated within 500 feet of any court of law, unless the owner was established at the location on or before July 1, 1984.

(2) Conform to standards established by regulation of the department. In adopting the standards, the department shall consider those practices and instructional programs which may reasonably foster the knowledge, skills, and judgment necessary for compliance with traffic laws. The standards may include, but are not limited to, school personnel, equipment, curriculum, procedures for the testing and evaluation of students, recordkeeping, and business practices.

(3) Procure and file with the department a bond of two thousand dollars (\$2,000) executed by an admitted surety and conditioned upon the applicant not practicing any fraud or making any fraudulent representation which will cause a monetary loss to a person taking instruction from the applicant or to the state or any local authority.

(4) Have a classroom approved by the department and the proper equipment necessary for giving instruction to traffic violators.

(5) Have a lesson plan approved by the department and provide not less than the minimum instructional time specified in the plan. An approved lesson plan shall provide a minimum of 400 minutes of instruction, except that a lesson plan for instructing persons under the age of 18 may provide a minimum of 600 minutes of instruction.

(6) (A) Execute and file with the department an instrument designating the director as agent of the applicant for service of process, as provided in this paragraph, in any action commenced against the applicant arising out of any claim for damages suffered by any person by the applicant's violation of any provision of this code committed in relation to the specifications of the applicant's traffic violator school or any condition of the bond required by paragraph (3).

(B) The applicant shall stipulate in the instrument that any process directed to the applicant, when personal service cannot be made in this state after due diligence, may be served instead upon the director or, in the director's absence from the department's principal offices, upon any employee in charge of the office of the director, and this substituted service is of the same effect as personal service on the applicant. The instrument shall further stipulate that the agency created by the designation shall continue during the period covered by the license issued pursuant to this section and so long thereafter as the applicant may be made to answer in damages for a violation of this code for which the surety may be made liable or any condition of the bond.

(C) The instrument designating the director as agent for service of process shall be acknowledged by the applicant before a notary public.

(D) If the director or an employee of the department, in lieu of the director, is served with a summons and complaint on behalf of the licensee, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars (\$5) shall also be paid to the director or employee at the time of service of the copy of the summons and complaint, or shall be included with a summons and complaint served by mail.

(E) The service on the director or department employee pursuant to this paragraph is sufficient service on the licensee if a notice of the service and a copy of the summons and complaint is, on the same day as the service or mailing of the summons and complaint, sent by registered mail by the plaintiff or his or her attorney to the licensee. A copy of the summons and

complaint shall also be mailed by the plaintiff or plaintiff's attorney to the surety on the licensee's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt.

(F) The director shall keep a record of all processes served pursuant to this paragraph showing the day and hour of service, and shall retain the documents served in the department's files.

(G) If the licensee is served with process by service upon the director or a department employee in lieu of the director, the licensee has 30 days after that service within which to answer any complaint or other pleading filed in the cause. For purposes of venue, if the licensee is served with process by service upon the director or a department employee in lieu of the director, the service is considered to have been made upon the licensee in the county in which the licensee has or last had his or her established place of business.

(7) Meet the requirements of Section 11202.5 and subdivision (b) of Section 11208, relating to traffic violator school operators, if the owner is also the operator of the traffic violator school. If the owner is not the operator of the traffic violator school, the owner shall designate an operator who shall meet the requirements of Section 11202.5.

(8) Provide the department with a written assurance that the school will comply with the applicable provisions of Subchapter II or III of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101, et seq.), and any other federal and state laws prohibiting discrimination against individuals with disabilities. Compliance may include providing sign language interpreters or other accommodations for students with disabilities.

(b) The qualifying requirements specified in subdivision (a) shall be met within one year from the date of application for a license, or a new application and fee is required.

(c) Paragraphs (3) and (6) of subdivision (a) do not apply to public schools or other public agencies, which shall also not be required to post a cash deposit pursuant to Section 11203.

(d) Paragraph (7) of subdivision (a) does not apply to public schools or other public educational institutions.

(e) A notice approved by the department shall be posted in every traffic violator school, branch, and classroom location stating that any person involved in the offering of, or soliciting for, a completion certificate for attendance at a traffic violator school program in which the person does not attend or does not complete the minimum amount of instruction time provided by subdivision (a) may be guilty of violating Section 134 of the Penal Code.

Amended Ch. 1053, Stats. 1994. Effective January 1, 1995.

Requirements for Traffic Violator School Operators

11202.5. (a) The department shall license traffic violator school operators. No person may act as a traffic violator school operator without a currently valid license issued by the department. Every person, in order to qualify as a traffic violator school operator, shall meet all of the following criteria in order to be issued a traffic violator school operator's license:

(1) Have not committed any act which, if the applicant were licensed as a traffic violator school operator, would be grounds for suspension or revocation of the license.

(2) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, teaching methods and techniques, traffic violator school statutes and regulations, and office procedures and recordkeeping.

(3) Be 21 years of age or older.

(4) Have worked for an established California traffic violator school, an established California driving school licensed under Chapter 1 (commencing with Section 11100) of Division 5, or an established commercial driving training and education program operated by a bona fide labor organization as an instructor for a period of not less than 500 hours of actual in-class instruction.

(b) Paragraph (4) of subdivision (a) does not apply to a traffic violator school operator validly licensed prior to January 1, 1987.

(c) All the qualifying requirements specified in this section shall be met within one year from the date of application for the license or the application shall lapse. However, the applicant may thereafter submit a new application upon payment of the required fee.

Amended Sec. 1, Ch. 282, Stats. 1999. Effective January 1, 2000.

Amended Sec. 5, Ch. 243, Stats. 2000. Effective January 1, 2001.

Bond Substitute

11203. In lieu of the bond otherwise required by paragraph (3) of subdivision (a) of Section 11202, the applicant may make a deposit pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure. The director may order the deposit returned at the expiration of three years from the date a traffic violator school licensee has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A () superior court may, upon petition, order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the court that there are no outstanding claims against the deposit. If either the director, department, or state is a defendant in any civil action instituted to recover all or any part of the deposit, or any civil action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the licensee recoverable from the deposit.

Amended Ch. 1241, Stats. 1992. Effective January 1, 1993.

Amended Sec. 598, Ch. 784, Stats. 2002. Effective January 1, 2003.

The 2002 amendment at the point(s) indicated, deleted the following "municipal or"

Cause of Action Against Owner and Bond

11203.5. If the state or any of its political subdivisions suffers any loss or damage by reason of any fraudulent practice or representation or by reason of any violation of this division by a traffic violator school owner, the department may bring a cause of action against the traffic violator school owner and the surety upon the owner's bond.

Added Ch. 1221, Stats. 1988. Effective January 1, 1989.

Issuance and Renewal of Licenses

11204. The department shall issue a license certificate to each traffic violator school owner and each traffic violator school operator licensed pursuant to this chapter. The term of the license shall be for a period of one year from the date of issue unless canceled, suspended, or revoked by the department. The license shall be renewed annually. The department shall require compliance with Section 11202 for renewal of the license of a traffic violator school owner. The department shall require compliance with Section 11202.5 for renewal of the license of a traffic violator school operator.

Where in its judgment the public interest so requires, the department may issue a probationary license subject to special conditions to be observed

by the licensee in the conduct of the traffic violator school. The conditions to be attached to the license shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein. The conditions shall not appear on the license certificate.

Upon notification of death of a traffic violator school licensee, the department may issue a temporary license to the executor or administrator of the estate of a deceased holder of a validly outstanding license to conduct a traffic violator school, or if no executor or administrator has been appointed and until a certified copy of an order making such an appointment is filed with the department, a temporary license may be issued to the surviving spouse or other heir entitled to conduct the business of the deceased. The temporary license shall permit the holder to conduct the traffic violator school for a period of one year from and after the date of the original licensee's death, and necessary one-year extensions may be granted to permit disposal of the business and qualification for a license of a purchaser of the business or the surviving spouse or heir. The department may restrict or condition a temporary license and attach to the exercise of the privilege thereunder any terms and conditions that in the department's judgment are required for the protection of the public.

Amended Ch. 396, Stats. 1985. Effective July 30, 1985.

Publication of List of Traffic Violator Schools

11205. (a) The department shall publish a traffic violator school referral list of all the approved locations of traffic violator school classes, by school name, to be transmitted to each municipal court in the state, and to each superior court in a county in which there is no municipal court, in sufficient quantity to allow the courts to provide a copy to each person referred to traffic violator school. The list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. It shall include all of the following:

(1) The name of each traffic violator school or, pursuant to subdivision (d), the general term "traffic violator school" followed by its traffic violator school license number.

(2) A phone number used for student information.

(3) The county and the judicial district.

(4) The cities where classes are available.

(b) Each traffic violator school owner shall be permitted one school name in a judicial district.

(c) The list shall be organized alphabetically in sections for each county and subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) On the list prepared by the department under subdivision (c), each traffic violator school shall appear by name unless a court determines, pursuant to subdivision (e), that a name is inappropriate and directs the department to delete the name and instead list the school by the term "traffic violator school" followed by its license number. The deletion of the name of a school from the list for a judicial district shall not affect whether that school appears by name on the list for any other judicial district within the state. In making a determination under this subdivision regarding the deletion of a name from the list, the court shall use as its criteria whether the name is misleading to the public, undignified, or implies that the school offers inducements or premiums which derogate or distort the instructional intent

of the traffic safety program.

(e) When the department transmits any referral list pursuant to subdivision (a), each court shall do all of the following:

(1) Within 30 days of receipt of the list, notify the school owner of any school name that the court intends to remove from the referral list.

(2) Within 60 days of receipt of the list, make every effort to schedule, conduct, and complete a hearing for the school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) Within 10 days of the completion of that hearing, notify the department and school owner of any school names it intends to remove from the referral list.

(f) In order for a court action to delete a school name from the next referral list published by the department, the department shall receive court notification no later than 90 days prior to publication of the next referral list and, absent a direct order by the appellate division of the superior court or a court of higher jurisdiction, the department shall not fail to publish a referral list on the grounds that there exists pending litigation or appeals concerning the lists.

(g) Any court notifying the department of a school name it intends to remove from the list, pursuant to this section, shall provide the school owner with the name of the judge making those findings.

(h) When a court informs a school owner, pursuant to subdivision (e), of its decision to delete the name of a traffic violator school from that judicial district's subsection of the department's traffic violator school referral list, the owner may, on a form approved by the department, submit a substitute name to the court and request approval of that name. The court shall, within 30 days of receipt of the request for approval of the substitute name, inform the department and the school owner, on a form approved by the department, of its approval or rejection of the substitute name. The school owner may continue this appeal process for approval of a substitute name until the court determines that the name does not violate the standard set forth in subdivision (d). A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. The department shall not impose any fee or license requirement under this subdivision.

(i) If a court fails to act within 30 days on a request of a traffic violator school owner, pursuant to subdivision (h), the proposed substitute name shall be deemed approved by the court for the purposes of the traffic violator school referral list.

(j) (1) Every application filed with the department on and after June 1, 1991, for an original license by a traffic school owner or for approval to conduct classes in a judicial district not previously approved, shall be accompanied by the approval of the court in each judicial district proposed for those operations of the name of the school, on a form approved by the department for that purpose. For the approved name to be included in the traffic violator school referral list, the form shall be received by the department no later than 90 days prior to publication.

(2) When a court disapproves a school name pursuant to this subdivision, the court shall notify the school owner within 30 days of its disapproval and schedule a hearing for that school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) The court shall make every effort to schedule, conduct, and complete

a hearing within 60 days of receipt of the school owner's request for a school name approval. A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. A change in physical location by a school within a judicial district shall not require approval pursuant to this subdivision.

(k) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each municipal court in the state, and to each superior court in a county in which there is no municipal court. This list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. This list shall include all of the following:

- (1) The name of each school, grouped by owner.
- (2) The business office address.
- (3) The business office telephone number.
- (4) The license number.
- (5) The owner's name.
- (6) The operator's name.

(l) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(m) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars (\$5), whichever is less.

(n) If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, this section is repealed on the date the decision of the court so holding becomes final.

Amended Ch. 308, Stats. 1994. Effective July 21, 1994.

Amended Sec. 1, Ch. 58, Stats. 1995. Effective July 6, 1995.

Amended Sec. 48, Ch. 571, Stats. 1997. Effective January 1, 1998.

Amended Sec. 455.5, Ch. 931, Stats. 1998. Effective September 28, 1998.

NOTE: If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill 185 of the 1991-92 Regular Session, or the application thereof to any person, is held to be unconstitutional, the preceding section is repealed on the date the decision of the court so holding becomes final and the following section becomes operative.

11205. (a) The department shall publish semiannually, or more often as necessary to serve the purposes of this act, a list of all traffic violator schools which are licensed pursuant to this section. The list shall identify classroom facilities within a judicial district that are at a different location from a licensed school's principal facility. The department shall transmit the list to each municipal court and to each superior court in a county in which there is no municipal court, with a sufficient number of copies to allow the courts to

provide one copy to each person referred to a licensed traffic violator school. The department shall, at least semiannually, revise the list to ensure that each court has a current list of all licensed traffic violator schools.

(b) Each licensed traffic violator school owner shall be permitted one school name per judicial district.

(c) The referral list shall be organized alphabetically, in sections for each county, and contain subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current referral list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(e) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars (\$5), whichever is less.

(f) If any provision of subdivision (d) or (e) of Section 11205, as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, that Section 11205 is repealed on the date the decision of the court so holding becomes final, and on that date, this section shall become operative.

Amended Ch. 308, Stats. 1994. Effective July 21, 1994.

Amended Sec. 2, Ch. 58, Stats. 1995. Effective July 6, 1995.

Amended Sec. 48.5, Ch. 571, Stats. 1997. Effective January 1, 1998.

Amended Sec. 456, Ch. 931, Stats. 1998. Effective September 28, 1998.

Court-Approved Driving Instruction Attendance Fee

11205.1. The fee authorized in subdivision (m) of Section 11205 shall be applicable only in those instances where a traffic violator has agreed to attend or has been ordered to attend a traffic violator school pursuant to Section 42005, a licensed driving school, or any other court-approved program for driving instruction.

Added Sec. 58, Ch. 850, Stats. 1997. Effective January 1, 1998.

Requirements For Traffic Violator School Instructors

11206. (a) The department shall license traffic violator school instructors. Except as exempted by this section, no person shall act as a traffic violator school instructor without a currently valid instructor's license issued by the department. Every person, in order to qualify as a traffic violator school instructor, shall meet all of the following requirements before an instructor's license may be issued:

(1) Have a high school education.

(2) Within three attempts, pass an examination as required by the department, on traffic laws, safe driving practices, operation of motor vehicles, and teaching methods and techniques.

(3) Hold a currently valid California driver's license, which is not subject to probation pursuant to Section 14250 due to the applicant being a negligent operator within the meaning of Section 12810 or 12810.5. The applicant's driving record shall not have any outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509.

(4) Be 18 years of age or older.

(b) All the qualifying requirements specified by this section shall be met within one year from the date of application for a license or the application shall lapse. However, the applicant may thereafter submit a new application upon payment of the requisite fee.

(c) A license issued pursuant to this section is not required to provide instruction to traffic violators in a public school or other public educational institution by a person holding a valid teaching credential with satisfactory training or experience in the subject area, as determined by the department. Persons exempt from licensure under this section are not required to obtain a license certificate pursuant to Section 11207.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Application for License

11206.5. Each applicant for a license as a traffic violator school owner, traffic violator school operator, or traffic violator school instructor shall submit an application to the department on the forms prescribed by the department. The applicant shall provide the department with any information concerning the applicant's character, honesty, integrity, and reputation which the department may consider necessary.

Added Ch. 75, Stats. 1987. Effective January 1, 1988.

Issuance and Renewal of Licenses

11207. (a) The department shall issue a license certificate to each traffic violator school instructor when it is satisfied that he or she has met the qualifications required under this chapter. The original instructor license and any license renewed pursuant to subdivisions (b) and (c) shall be valid for a period of three years from the date of issuance unless canceled, suspended, or revoked by the department.

(b) Every application for the renewal of a traffic violator school instructor license may be made by the licensee prior to the expiration date of the license by presenting to the department a completed application on a form provided by the department. In no event shall a traffic violator school instructor renew the license after the date of expiration.

(c) The department shall require all of the following for the renewal of an instructor's license:

(1) Compliance with Section 11206, except subdivision (c) thereof.

(2) Satisfactory completion of an examination as provided in Section 11206 at least once during each succeeding three-year period after the initial issuance of the license. However, in lieu of examination for renewal of the license, the department may accept submission by the licensee of evidence of continuing professional education.

(d) When, in its judgment, the public interest so requires, the department may issue a probationary license subject to special conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the license shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant, as disclosed by the application and investigation by the department of the information contained therein.

Amended Ch. 111, Stats. 1987. Effective January 1, 1988.

Fees

11208. (a) Fees for issuance by the department of a license to a traffic violator school owner shall be as follows:

(1) For the original license or an ownership change which requires a new application, except as provided by Section 42231, a fee of one hundred fifty dollars (\$150), with an additional fee of seventy dollars (\$70) for each separate traffic violator school branch or classroom location licensed. The fee prescribed by this subdivision is nonrefundable.

(2) For annual renewal of the license for a traffic violator school and for each branch or classroom location, a fee of fifty dollars (\$50).

(3) If alteration of an existing license is required by a firm name change, a change in corporate officer structure, address change, or the addition of a traffic violator school branch or classroom location, a fee of seventy dollars (\$70).

(4) For replacement of the license certificate when the original license is lost, stolen, or mutilated, a fee of fifteen dollars (\$15).

(b) Fees for the issuance by the department of a license for a traffic violator school operator shall be as follows:

(1) For the original license, a nonrefundable fee of one hundred dollars (\$100).

(2) For annual renewal of the license, a fee of fifty dollars (\$50).

(3) If alteration of an existing license is caused by a change in the name or location of the established principal place of business of the traffic violator school operated by the licensee, including a transfer by a licensee from one traffic violator school to another, a fee of fifteen dollars (\$15).

(4) For replacement of the license certificate when the original license is lost, stolen, or mutilated, a fee of fifteen dollars (\$15).

(c) Fees for the issuance by the department of a license for a traffic violator school instructor shall be as follows:

(1) For the original license, except as provided by Section 42231, a nonrefundable fee of thirty dollars (\$30).

(2) For the triennial renewal of a license, a fee of thirty dollars (\$30).

(3) If alteration of an existing license is required by a change in the instructor's employing school's name or location, or transfer of the instructor's license to another employing school, a fee of fifteen dollars (\$15).

(4) For replacement of the instructor's license certificate when the original license is lost, stolen, or mutilated, a fee of fifteen dollars (\$15).

(d) The department shall charge a fee, not to exceed three dollars (\$3), for each completion certificate issued by a traffic violator school to each person referred by a court pursuant to Section 42005 and completing instruction at the traffic violator school. The amount of the fee shall be determined by the department and shall be a fee sufficient to defray the actual costs incurred by the department for publication and distribution of lists of schools for traffic violators pursuant to Section 11205, for monitoring instruction, business practices, and records of schools for traffic violators and for any other activities deemed necessary by the department to assure high quality education for traffic violators. Upon satisfactory completion of the instruction offered by a licensed traffic violator school, the traffic violator school shall provide the student referred by a court pursuant to Section 42005 with a certificate of completion furnished by the department. A certificate of completion shall not be issued to a person who elects to attend a traffic violator school. A traffic violator school shall not charge a fee in excess of the fee charged by the department pursuant to this subdivision for furnishing a certificate of completion. A traffic violator school may charge a fee not to exceed three dollars (\$3), in addition to the fee charged by the

department for the issuance of a duplicate certificate of completion. A student referred by a court pursuant to Section 42005 shall present this certificate of completion to the court as proof of completion of instruction, and no other proof of completion of instruction may be accepted by the court.

(e) The department shall compile its actual costs incurred to determine the fee prescribed in subdivision (d) and make available its financial records used in the determination of the fee for completion certificates. The fee shall be adjusted every odd-numbered year based upon the costs incurred during the preceding two fiscal years. The records described in this subdivision are public records.

Amended Sec. 3, Ch. 457, Stats. 2001. Effective January 1, 2002.

Expired License: Renewal

11209. Any traffic violator school owner, traffic violator school operator, or traffic violator school instructor required to be licensed under this chapter who fails to renew the license before the expiration of the license may not renew that license, but may reapply for an original license pursuant to this chapter. For purposes of this section, a license that has been canceled may not be renewed and a license that is suspended or revoked may not be renewed, until reinstatement or reissuance by the department. If the period of suspension or revocation extends beyond the expiration of a license, it may not be renewed, but the person may apply for a new license thereafter.

Amended Ch. 111, Stats. 1987. Effective January 1, 1988.

Temporary Permit

11210. Pending determination by the department that an applicant for a license fully satisfies the requirements of this chapter, the department may issue a temporary permit to the applicant. A temporary permit may authorize the operation of a traffic violator school or acting as a traffic violator school operator or traffic violator school instructor for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for the license.

The department may cancel a temporary permit when it has determined or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error. A temporary permit is invalid upon cancellation or once the applicant has been issued or denied the license applied for.

Amended Ch. 396, Stats. 1985. Effective July 30, 1985.

Refusal to Issue License

11211. (a) The department may refuse to issue a license to any applicant under this chapter when it finds and determines that any of the following exist:

(1) The applicant was previously the holder of a license under this chapter which was revoked or suspended.

(2) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(3) The applicant has done any act or series of acts which would be a cause for suspension or revocation of licensure under Section 11215, regardless of whether the applicant was licensed under this chapter at the time of the act or acts.

(4) If the applicant is a business, a business representative was the holder

of a previously issued license under this chapter that was suspended or revoked or has done any act or series of acts which would be a cause for suspension or revocation of a license under Section 11215, regardless of whether the business representative was licensed under this chapter at the time of the act or acts.

(5) By reason of the facts and circumstances relating to the organization, control, and management of the business, it is likely that both of the following will occur:

(A) The policy or operation of the business will be directed, controlled, or managed by an individual who, by reason of an act, series of acts, or conduct described in paragraph (3) or (4), would be ineligible for a license.

(B) By licensing the business, the purposes of this division would be defeated.

(6) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license under this chapter.

(7) The applicant, or a business representative if the applicant is a business, has been convicted of a crime, or committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of *nolo contendere* is a conviction within the meaning of this section.

(b) Upon refusal of the department to issue a license under this chapter, the applicant is entitled to a hearing upon demand in writing submitted to the department within 60 days after notice of refusal. The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked or application for a license has been refused may reapply for the license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

Amended Sec. 43, Ch. 877, Stats. 1998. Effective January 1, 1999.

Records of Licensees

11212. (a) Every owner licensed under this chapter shall keep a record at the traffic violator school's primary business location showing all of the following for each student:

(1) The name and address and license number of the traffic violator school providing instruction.

(2) The name and address of each person given instruction.

(3) The instruction permit number or driver's license number of every person given instruction.

(4) The name and number of the license issued pursuant to Section 11207 of the traffic violator school instructor.

(5) The particular type of instruction given and the date or dates of the instruction.

(6) A statement as to whether the approved lesson plan was followed.

(7) The total number of hours of instruction.

(8) The total cost to the student of the instruction, which shall not exceed the amount of the fee represented or advertised by the traffic violator school at the time of the student's enrollment.

(9) The court docket number under which the student was referred to a traffic violator school.

(10) The number of the completion certificate issued to the student pursuant to subdivision (e) of Section 11208 and, if different, the number of any copy thereof issued to the student.

(b) The records shall be retained for a minimum of three years and shall

be open to the inspection during business hours and at all other reasonable times by the department, the court, a private entity providing monitoring pursuant to Section 11222, the Legislative Analyst, and the State Auditor or authorized employees thereof, but shall be only for confidential use.

(c) Whenever a licensee suspends or terminates the licensed activity, the licensee shall surrender the records specified in subdivision (a) to the department for examination not later than the end of the third day, excluding Saturdays, Sundays, and legal holidays, after the date of suspension or termination. The department may duplicate or make a record of any information contained therein. All these records shall be returned to the licensee not later than 30 days after the date of surrender.

(d) The address of any person kept pursuant to paragraph (2) of subdivision (a) shall only be used by the school for school administrative purposes.

Amended Sec. 5, Ch. 739, Stats. 2001. Effective January 1, 2002.

Change of Ownership, Location, or Residence

11213. (a) Every traffic violator school owner licensed pursuant to this chapter shall notify the department within 10 days of any change in the ownership or corporate structure of the licensee.

(b) Every traffic violator school owner shall immediately notify the department of the following activities:

(1) Change of the site or location of the school's established principal place of business.

(2) Addition or deletion of a traffic violator school branch or classroom location.

(c) Every traffic violator school operator and traffic violator school instructor licensed pursuant to this chapter shall report to the department every change of residence address within five days of the change.

(d) The department may require persons licensed pursuant to this chapter to submit additional reports as determined necessary by the department to serve the purposes of this chapter.

Amended Ch. 396, Stats. 1985. Effective July 30, 1985.

Monitoring Schools

11214. The department may monitor any school for traffic violators, including any traffic violator school branch or classroom location, without advance notice. The monitoring may include, but is not limited to, the instruction provided, business practices, and business records.

Amended Ch. 396, Stats. 1985. Effective July 30, 1985.

Suspension or Revocation of Licenses

11215. The department, after notice and hearing, may suspend or revoke any license issued under this chapter if any of the following circumstances exist:

(a) The department finds and determines that the licensee ceases to meet any requirement to obtain a license under this chapter.

(b) The holder fails to comply with, or otherwise violates, any provision of this chapter or any regulation or requirement of the department adopted pursuant to this chapter.

(c) The licensee engages in fraudulent practices with respect to its activities licensed under this chapter or induces or fails to promptly report to the department any known fraud or fraudulent practices on the part of any employee of the traffic violator school.

(d) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or

which would reasonably have the effect of leading persons to believe that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises, in any manner or means any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(e) The licensee or any employee or agent of the licensee collects fees for or preregisters any person in traffic violator school or solicits traffic violator school instruction in an office of the department or in any court or within 500 feet of any court.

(f) The licensee is convicted of violating Section 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or Section 192 of the Penal Code. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(g) The traffic violator school owner teaches, or permits an employee to teach, traffic safety instruction without a valid instructor's license.

(H) The traffic violator school owner does not have in effect a bond as provided in paragraph (3) of subdivision (a) of Section 11202 or a deposit in lieu of the bond, as specified in Section 11203.

Amended Ch. 969, Stats. 1992. Effective January 1, 1993.

Suspension or Revocation: Additional Grounds

11215.5. The department, after notice and hearing, may also suspend or revoke any license issued under this chapter when any of the following circumstances exist:

(a) If the main business office of the traffic violator school is located in any county with a population of 400,000 or more in which the traffic violator school conducts its instructional program, and the main business office does not maintain office hours during the time that the day courts in that county are open for business. This subdivision shall not apply to public schools.

(b) If the licensee is found by the department to be selling, or knowingly permitting the sale of, completion certificates.

(c) If the licensee is found by the department to be intentionally cutting instructional time short.

(d) If the licensee is found by the department to be intentionally diverting any student to a traffic school other than the school initially contacted by that student, without disclosure to that student, through the use of the department's list of licensed traffic violator schools.

Amended Ch. 1196, Stats. 1988. Effective January 1, 1989.

Suspension or Revocation of License: Additional Causes

11215.7. Any of the causes specified in this chapter as a cause for refusal to issue a license under this chapter is cause to suspend or revoke a license under this chapter.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Cancellation of Licenses

11216. Any license issued to a traffic violator school owner under this chapter shall be automatically canceled upon the happening of any of the following:

(a) The abandonment of the established place of business or the change thereof without notice to the department pursuant to Section 11213.

(b) The failure to maintain an adequate bond or to procure and file another bond, as required by Section 11202, prior to the effective date of the termination by the surety of any existing bond.

(c) The voluntary or involuntary surrender of the license, except that a surrender or cessation of business by the licensee, or the suspension or

revocation of the corporate status of the licensee, does not preclude the department from filing an accusation for revocation or suspension of the surrendered license, as provided in Section 11215 or 11215.5, or affect the department's decision to suspend or revoke the license.

(d) Notification to the department that the person designated as the licensee has changed.

(e) Suspension or cancellation of the corporate status of the licensee.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Automatic Suspension: Discrimination Against Individuals with Disabilities

11216.2. (a) Any license issued to the owner or operator of a traffic violator school under this chapter shall be automatically suspended for 30 days by the department if the department has been notified that more than one final determination has been made that the traffic violator school has violated a student's rights under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101, et seq.) or any other federal or state law prohibiting discrimination against individuals with disabilities. The final determination shall be made by a federal or state court of competent jurisdiction or an appropriate federal or state administrative agency, including, but not limited to, the Department of Fair Employment and Housing, or any combination thereof.

For the purpose of this subdivision, "final determination" means that no further appeal of a determination can be taken to any court because the time period for the appeal has expired.

(b) If a traffic violator school subject to suspension under this section is operated by a traffic school operator licensed pursuant to Section 11202.5 who is operating other traffic schools, the licenses of the owners of those traffic schools operated by that traffic school operator also shall be suspended for the 30-day period.

Added Ch. 1053, Stats. 1994. Effective January 1, 1995.

Amended Sec. 122, Ch. 124, Stats. 1996. Effective January 1, 1997.

Interim Refusal to Issue or Suspension of License

11216.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) If a conviction, on which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or the suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall be also stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal to issue or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Notice and Hearing Before Suspension or Revocation

11217. (a) Every licensee under this chapter is entitled to notice and

hearing prior to suspension or revocation of the license by the department, except that the department shall immediately suspend the license pursuant to subdivision (e) for any act of fraud specified in subdivision (c) or (d) of Section 11215.

(b) Before reinstatement of any license suspended pursuant to subdivision (a) of Section 11215, the licensee shall pay the department a reinstatement fee of five dollars (\$5).

(c) The notice and hearings provided for in this division shall be pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any action of the department in suspending, canceling, revoking, or failing to renew a license issued pursuant to this chapter may be reviewed by any court of competent jurisdiction.

(e) The department may, pending a hearing, temporarily suspend the license or permit of any traffic violator school owner, operator, or instructor for a period of not more than 30 days if the director finds that the public interest so requires. In that case, a hearing shall be held and a decision issued within 30 days after issuance of the notice of temporary suspension.

(f) The suspension, expiration, or cancellation of a license issued pursuant to this chapter does not preclude the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled license, and does not invalidate or otherwise preclude a decision by the department to suspend or revoke the license and this determination may be considered by the department in granting or refusing to grant any subsequent license under this chapter to the same licensee or to any business representative of the same licensee.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Service of Process

11217.5. Any owner licensed under this chapter who has closed his or her established place of business or any operator or instructor currently or previously licensed under this chapter who no longer resides at the address last filed with the department, may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business, in the case of an owner, or at that residence, in the case of an operator or instructor, unless the person has notified the department in writing of another address where service may be made.

Added Ch. 751, Stats. 1988. Effective January 1, 1989.

Compromise Settlement Agreement

11218. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not exceed one thousand dollars (\$1,000) per violation for a traffic violator school owner or five hundred dollars (\$500) per violation for traffic violator school operators or instructors, and shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum

and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated, unless that accusation or statement has not yet been forwarded to the Office of Administrative Hearings.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

Amended Ch. 1243, Stats. 1992. Effective September 30, 1992.

Conduct of Courses: Rules and Regulations

11219. The director may prescribe rules and regulations for traffic violator schools regarding the conduct of courses of education including curriculum, facilities, and equipment. The curriculum shall include, but is not limited to, the rights and duties of a motorist as they pertain to pedestrians and the rights and duties of a pedestrian as they relate to traffic laws and traffic safety. The director may also prescribe rules and regulations for the conduct of instructor training courses.

Amended Sec. 5.5, Ch. 833, Stats. 2000. Effective January 1, 2001.

Additional Curriculum Requirements

11219.3. The curriculum prescribed pursuant to Section 11219 shall include, but is not limited to, the rights and duties of a motorist as they pertain to pedestrians and the rights and duties of a pedestrian as they relate to traffic laws and traffic safety.

Added Sec. 5.5, Ch. 833, Stats. 2000. Effective January 1, 2001.

Issuance of Receipts

11219.5. A traffic violator school shall issue a receipt for any fee collected by the traffic violator school from any person who registers for or attends, or both, the traffic violator school.

Added Ch. 396, Stats. 1985. Effective July 30, 1985.

Reexamination

11220. The department may require any person licensed under this chapter to submit to a reexamination of his or her qualifications when there is reasonable cause to believe that the licensee does not have the ability to give instruction. If the licensee refuses or fails to submit to the reexamination, the department may, without a hearing, temporarily suspend his or her license until such time as the licensee submits to the reexamination. The suspension shall be effective upon receipt of notice by the licensee.

Added Ch. 1037, Stats. 1984. Effective January 1, 1985.

Contract with Nongovernmental Agency

11222. The department may contract with a nongovernmental entity to administer any part of this chapter, subject to limitations in other laws regarding contracting out for services. No contract shall exceed three years'

duration. The contracting entity, and any affiliate or subsidiary thereof monitoring traffic violator schools, shall conform to all of the following requirements:

(a) Engage in no other business activity with traffic violator schools or any of the principals of the traffic violator schools, including the provision of services or supplies.

(b) Provide reports in statistical form to the department and to the Legislature as instructed by the department. These reports shall be issued not less frequently than annually.

(c) Make its records available for inspection by authorized representatives of the department, the Legislative Analyst, and the State Auditor.

Amended Sec. 6, Ch. 739, Stats. 2001. Effective January 1, 2002.

CHAPTER 2. VEHICLE VERIFIERS

Permit Required

11300. It shall be unlawful for any person to act as a vehicle verifier without first having procured a vehicle verifier's permit issued by the department, or when such permit has been canceled, suspended, revoked or invalidated.

Added Ch. 700, Stats. 1975. Effective January 1, 1976.

Requirements for Application

11301. Every vehicle verifier shall make application to the department upon the appropriate form, accompanied by a good and sufficient bond, approved as to form by the Attorney General, in the amount of five thousand dollars (\$5,000) with corporate surety thereon, duly licensed to do business within the State of California.

(a) The department shall prescribe and provide forms to be used for application for permits to be issued under the terms and provisions of this chapter and require of applicants information including, but not limited to, residence address, fingerprints, and personal history statements touching on and concerning the applicant's character, honesty, integrity, and reputation as it may consider necessary.

(b) Upon receipt of an application in proper form accompanied by the appropriate fee, the department shall within 120 days, make a thorough investigation of the information contained in the application.

Amended Ch. 751, Stats. 1988. Effective January 1, 1989.

Cash Deposit: Disposition

11301.5. If a deposit is given instead of the bond required by Section 11301:

(a) The Director of Motor Vehicles may order the refund of the deposit three years from the date a vehicle verifier has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a () superior court may order the return of the deposit prior to the expiration of three years from the date a vehicle verifier has ceased to be licensed if there is evidence satisfactory to the court that there are no outstanding claims against the deposit.

(b) If the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those

administrative costs incurred in processing claims against the deposit.

Amended Sec. 599, Ch. 784, Stats. 2002. Effective January 1, 2003.

The 2002 amendment at the point(s) indicated, deleted the following "municipal or"

Issuance, Refusal to Issue, Suspension, Revocation

11302. (a) The department may issue, or for reasonable cause shown, refuse to issue, a vehicle verifier's permit to any applicant, or may, after notice and hearing, suspend or revoke the permit when satisfied that the applicant or permittee:

(1) Has violated any of the provisions of this division or has committed any acts which are grounds for the refusal to issue, or the suspension or revocation of a permit or license issued under this division.

(2) Was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(3) Has purchased, sold, or otherwise acquired or disposed of, a vehicle which was stolen or embezzled or has performed or submitted to the department, or its authorized representative, documents purporting verification of a vehicle which was stolen or embezzled.

(4) Has, in the course of performing a vehicle verification, acted with negligence or incompetence in the reporting of erroneous information to the department, or its authorized representative, and has thereby caused the department to issue inaccurate certificates of ownership or registration, or any other documents or indices which it would not otherwise have issued.

(b) Every hearing as provided for in this chapter shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Sec. 44, Ch. 877, Stats. 1998. Effective January 1, 1999.

Notification of Change of Address

11302.2. (a) Every person licensed under this chapter shall report to the department every change of residence address within 10 days of the change.

(b) Any person currently or previously licensed under this chapter who no longer resides at the address last filed with the department may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that residence, unless the person has notified the department in writing of another address where service may be made.

Added Ch. 751, Stats. 1988. Effective January 1, 1989.

Compromise Settlement Agreement

11302.5. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not exceed five hundred dollars (\$500) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum

and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

Added Ch. 1022, Stats. 1985. Effective January 1, 1986.

Unlawful Acts; Causes for Disciplinary Action

11305. It shall be unlawful and cause of disciplinary action for the holder of a vehicle verifier's permit:

(a) To submit to the department, or its authorized representative, any document which purports to evidence the verification of any vehicle, without having actually physically inspected such vehicle to determine the existence of proper vehicle identification.

(b) To fail to report to the department, in a manner prescribed by the department, the absence, alteration, or obvious attempt to alter or obliterate any identifying number or number plate, or remove or attempt to remove such plate on any vehicle for which verification is performed.

(c) To fail to physically compare identifying numbers on a vehicle inspected to the information contained in any document of title, registration, or any other form describing such vehicle.

(d) To cause any person to suffer any loss or damage by reason of any fraud or deceit practiced upon such person in the course of the conducting of business under the vehicle verifier's permit.

(e) To violate one or more terms and provisions of Section 20, or of Division 3 (commencing with Section 4000), or of this division of this code, or any rules or regulations adopted pursuant thereto, or of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code.

Added Ch. 700, Stats. 1975. Effective January 1, 1976.

Hearing; Probationary Permit; Reapplication

11306. (a) If the department issues or renews a vehicle verifier's permit requiring conditions of probation, or if the department refuses to issue a vehicle verifier's permit, the applicant shall be entitled to demand, in writing, a hearing as provided in this chapter, before the director, or his representative, within 60 days after notice of refusal or issuance of the probationary permit.

(b) Except where the provisions of this code require the refusal to issue a permit, the department may issue a probationary permit subject to conditions to be observed by the permittee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

(c) The department may, pending a hearing, temporarily suspend the permit issued to a vehicle verifier for a period not to exceed 30 days if the director finds that such action is required in the public interest. In any such case, a hearing shall be held and a decision thereon issued within 30 days after notice of the temporary suspension.

(d) A person whose application for a permit has been denied may reapply for such permit after a period of not less than one year has elapsed from the date of filing of such denial.

Added Ch. 700, Stats. 1975. Effective January 1, 1976.

Record Required

11307. (a) A vehicle verifier shall maintain a record of each verification made. The record shall contain all of the following:

(1) The name and address of the person requesting the verification and the fee charged for such verification.

(2) The year model, vehicle identification number, license plate number of the vehicle verified and the state in which the vehicle was last registered.

(b) All records maintained by a vehicle verifier shall be open to inspection by any peace officer.

Added Ch. 700, Stats. 1975. Effective January 1, 1976.

Rules and Regulations

11308. The department may adopt rules and regulations concerning the issuance, use, and renewal of a vehicle verifier's permit, and for determining the competence of an applicant therefore.

Added Ch. 700, Stats. 1975. Effective January 1, 1976.

Fees

11309. (a) The following fees for a vehicle verifier's permit shall be paid to the department:

(1) For the application and original permit, except as provided by Section 42231, a nonrefundable fee of fifty dollars (\$50).

(2) For an application for renewal, fifteen dollars (\$15).

(b) All permits shall be renewed on a biennial basis. All original permits shall be issued for a period of not less than two years, except in the case of a probationary license which, in the discretion of the department, may be issued for a shorter term.

Amended Ch. 1273, Stats. 1982. Effective January 1, 1983.

Time for Compliance

11310. Any person who holds a vehicle verifier's permit issued before the operative date of this chapter shall comply with the provisions of this chapter within three months after its operative date.

Added Ch. 700, Stats. 1975. Effective January 1, 1976.

Filing of Accusation

11312. The suspension, expiration, or cancellation of a vehicle verifier's permit provided for in this chapter shall not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled permit as provided in Section 11302 or 11305 or any rules or regulations adopted pursuant to Section 11308, and the department's decision that the permit should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license or permit authorized by this division to that vehicle verifier or to a business representative of that prior vehicle verifier's permit.

Added Sec. 45, Ch. 877, Stats. 1998. Effective January 1, 1999.

CHAPTER 2.5. REGISTRATION SERVICES

(Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.)

License or Temporary Permit Required

11400. No person shall act as a registration service, engage in the business of soliciting or receiving any application for the registration, renewal of registration, or transfer of registration or ownership of any vehicle of a type subject to registration under this code, or transmit or present any of those documents to the department, if any compensation is solicited or received for the service, without a license or temporary permit issued by the department pursuant to this chapter, or if that license or temporary permit has expired or been canceled, suspended, or revoked, or the terms and conditions of an agreement entered into pursuant to Section 11408 have not been fulfilled.

Amended Sec. 4, Ch. 1155, Stats. 1996. Effective January 1, 1997.

Application for License

11401. An applicant for a license to be a registration service shall submit an application to the department upon the appropriate form for a license and a distinguishing number. The applicant shall also include with the application any information as to the applicant's character, honesty, integrity, and reputation which the department requires. The application shall include, but not be limited to, all of the following:

(a) The type of ownership, whether an individual, a partnership, or a corporation. If the applicant is a partnership, the names and titles of all partners, except limited partners, shall be furnished. If the applicant is a corporation, the names and titles of all controlling stockholders, directors, and officers who, by reason of the facts and circumstances, could direct, control, or manage the business of the registration service shall be furnished.

(b) The name and address of the business, including street, city, and postal zip code of the principal place of business and any branch location.

(c) A personal history statement and fingerprints from any person required to be identified in subdivision (a), containing the information the department requires.

(d) The name, address, driver's license number, and a brief physical description of all persons employed or otherwise engaged by the registration service to perform registration work.

(e) A bond executed by an admitted surety insurer, approved as to form by the Attorney General, to cover any loss to the public or the State of California arising out of the operation of the registration service.

(f) A nonrefundable application fee, as specified in Section 11409.

Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.

Bond

11402. (a) The amount of the bond required by subdivision (e) of Section 11401 is five thousand dollars (\$5,000). Liability under the bond shall remain at that amount.

(b) If the amount of the liability under the bond is decreased, or there is outstanding a final court judgment arising out of a violation of any provision of this code for which the registration service is liable, the license of the registration service shall be automatically suspended. In order to reinstate the license, the registration service shall either file an additional bond or restore the bond on file to the original amount, or shall satisfy the outstanding judgment for which the registration service and surety are liable.

(c) The bond shall remain in effect for three years after cessation of

business of the registration service.

Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.

Service of Process

11403. (a) A license to conduct a registration service, or a renewal of that license, shall not be issued to any applicant unless the applicant files with the department an instrument, in writing, in which the applicant appoints the director as the agent of the applicant upon whom all process may be served in any action which may be commenced against the applicant arising out of any claim for damages by any person by reason of the violation by the applicant of any provision of this code in connection with the registration service or any condition of the registration service's bond.

(b) The applicant shall agree in the instrument that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in that case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, is of the same force and effect as if served upon the applicant personally.

(c) The applicant shall further agree, in writing, that the agency created by the instrument shall continue during the period covered by any license that may be issued and so long thereafter as the applicant may be required to answer in damages for a violation of this code in connection with the registration service or any condition of the bond.

(d) The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public.

(e) If the registration service is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars (\$5) shall also be paid to the director at the time of service of the copy of the summons and complaint.

(f) Service on the director is a sufficient service on the registration service if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the registration service. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the registration service's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt.

(g) The director shall keep a record of all process served on the director pursuant to this section, which shall show the day and hour of service, and shall retain the summons and complaint so served on file.

(h) If the registration service is served with process by service upon the director, the registration service has 30 days from the date of that service within which to answer any complaint or other pleading which may be filed in the cause.

(i) For purposes of venue, if the registration service is served with process by service upon the director, the service is deemed to have been made upon the registration service in the county in which the registration service has, or last had, its principal place of business.

Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.

Temporary Permit

11404. (a) Until the department determines that the applicant meets all the requirements of this chapter, it may issue a temporary permit to the person applying for a license as a registration service.

(b) The temporary permit shall permit the operation by the registration

service or registration agent for not more than 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for the license. The department may cancel the temporary permit when it has determined that the application is incorrect or incomplete or that the temporary permit was issued in error.

(c) The temporary permit is invalid when canceled or when the license has been issued or refused.

Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.

***Refusal to Issue, Suspension, Revocation,
or Cancellation of License***

11405. The department may refuse to issue a license to, or may suspend, revoke, or cancel the license of, a person to act as a registration service for any of the following reasons:

(a) The person has been convicted of a felony or a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity.

(b) The person is, or has been, the holder, or a managerial employee of the holder, of any occupational license issued by the department which has been suspended or revoked.

(c) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(d) The person has used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in the application for the license.

(e) The person has knowingly made, or acted with negligence or incompetence, or knowingly or negligently accepted or failed to inquire about any false, erroneous, or incorrect statement or information submitted to the registration service or the department in the course of the licensed activity.

(f) The person has knowingly or negligently permitted fraud, or willfully engaged in fraudulent practices, with reference to clients, vehicle registrants, members of the public, or the department in the course of the licensed activity.

(g) The person has knowingly or negligently committed or was responsible for any violation, cause for license refusal, or cause for discipline under Section 20 or Division 3 (commencing with Section 4000), Division 3.5 (commencing with Section 9840), Division 4 (commencing with Section 10500), or Division 5 (commencing with Section 11100), or any rules or regulations adopted under those provisions.

(h) The person has failed to obtain and maintain an established place of business in California.

(i) The person has failed to keep the business records required by Section 11406.

(j) The person has violated any term or condition of a restricted license to act as a registration service.

(k) The person has committed or was responsible for any other act, occurrence, or event in California or any foreign jurisdiction which would be cause to refuse to issue a license to, or to suspend, revoke, or cancel the license of, a person to act as a registration service.

Amended Sec. 5, Ch. 1155, Stats. 1996. Effective January 1, 1997.

Amended Sec. 46, Ch. 877, Stats. 1998. Effective January 1, 1999.

Business Records Required: Alternative: Duplication Document

11406. (a) Every registration service shall keep business records containing all of the following information:

(1) The name, address, and license number of the registration service and the name and address of every employee who performs registration work.

(2) The name and address of each client for whom registration work was performed.

(3) The identity of every vehicle by year, make, type, license number, and vehicle identification number on which registration work was performed.

(4) The amount of registration fees or payments collected for each vehicle on which registration work was performed, including the method of payment to the registration service.

(5) The amount of registration fees or payments submitted to the department for each vehicle on which registration work was performed, including the date and method of payment to the department.

(6) The amount of any refunds or additional charges on registration fees or payments collected for each vehicle on which registration work was performed, including the date and method of payment of the refund or additional charge by or to the client, the registration service, or the department.

(7) The name, signature, or initials of each employee performing work on each transaction and the date the work was done.

(8) The cost to each client for the registration work performed on each of the client's vehicles.

(b) As an alternative to maintaining the records required by paragraphs (1) to (8), inclusive, of subdivision (a), a registration service may retain a copy of the listing sheet approved by the department for transmitting registration documents to the department.

(c) Every registration service shall provide each customer with a document containing all of the information required by subdivision (a) relative to that customer's transaction, excluding paragraph (7) and excluding the addresses of employees and other customers' names and addresses. This requirement does not apply to transactions for customers of a dealer or dismantler.

(d) Every registration service shall display prominently at its place of business a sign indicating that the service is not a branch of the department and shall inform each customer of that fact.

Amended Sec. 8, Ch. 766, Stats. 1995. Effective January 1, 1996.

Incomplete Transaction: Return of Records

11406.5. Whenever a customer fails to submit to a registration service any documents, compensation, or fees requested in writing by the registration service, the registration service shall return all documents pertaining to the incomplete transaction, including the department receipt evidencing any fees paid, within 60 days after the request was sent to the customer, to the last known address of the customer, by registered mail.

Added Ch. 1243, Stats. 1992. Effective September 30, 1992.

Maintenance and Inspection of Business Records

11407. The business records required by Section 11406 shall be maintained for at least four years and shall be open to inspection by the department during normal business hours.

The department may duplicate or make a record of any information contained in any of those records, which shall be for the official use of the department.

All records shall be returned to the licensee not later than 30 days after

receipt of the records by the department.

Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.

Issuance, Denial, Suspension, Revocation, or Cancellation of License

11408. (a) The director may issue an order to grant an unrestricted or a restricted license to act as a registration service, or an order to deny, suspend, revoke, or cancel a license to act as a registration service.

(b) The order shall become final 30 days from issuance, unless the denied or restricted applicant or licensee files with the department a request for a hearing. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any registration service may be served with an accusation issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail to the address of the principal place of business on file with the department, whether or not the business has been closed or terminated, unless the registration service has notified the department in writing of another address where service shall be made.

(d) The department may, pending a hearing, temporarily suspend the license issued to a registration service for not more than 30 days if the director finds that action is required in the public interest. In that case, a hearing shall be held and a decision issued within 30 days after the notice of the temporary suspension or cancellation.

(e) The director may, following the filing of a statement of issues or an accusation against an applicant or a registration service, with the consent of the applicant or licensee, enter into a compromise settlement agreement with a stipulated restriction or penalty whereby the applicant or licensee accepts the terms and conditions of the agreement without a hearing or appeal by any party thereto.

(1) The compromise settlement agreement may provide for a restricted license, special operating terms and conditions, a higher bond, a monetary penalty, or any other term or condition agreeable to the parties.

(2) The compromise settlement agreement shall be signed by the respondent applicant or licensee, the director, and the accuser, or their authorized representatives, and filed with the Office of Administrative Hearings, together with the department's notice of withdrawal of the statement of issues or the accusation upon which the action was initiated.

(3) A failure of the respondent applicant or licensee to carry out a compromise settlement agreement entered into under this under this section is a separate cause to refuse to issue, or to suspend, revoke, or cancel, any license authorizing the respondent to act as a registration service.

(f) Any person whose license to act as a registration service was suspended for cause and the terms of the suspension are unfulfilled, or whose license was revoked for cause, may reapply for a license to act as a registration service after not less than one year from the effective date of the suspension or revocation action.

(g) The issuance of a new license to that person is within the sole discretion of the department, and a hearing regarding that issuance shall be held only upon the consent of the director.

Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.

Fees

11409. The fee for a license issued to a registration service is as follows:

(a) For the original license, or an ownership change which requires a new application, one hundred fifty dollars (\$150), which is nonrefundable.

(b) For the annual renewal of a license, fifteen dollars (\$15).

(c) For the alteration of an existing license required by a name change, address change, change in corporate officer structure, or the addition of a branch location, seventy dollars (\$70).

Added Ch. 1196, Stats. 1990. Effective January 1, 1991. Operative July 1, 1991.

Term of License: Renewal

11410. (a) Every license issued under this chapter is valid for a period of one year from the last day of the month of issuance. Except as provided in subdivision (c), renewal of the license for the ensuing year may be obtained by the person to whom the license was issued upon application to the department and payment of the fee required by Section 11409.

(b) Every application for the renewal of a license shall be made by the licensee not more than 90 days prior to the expiration date and shall be made by presenting the completed application form provided by the department and by payment of the renewal fee.

(c) If the application for renewal of the license is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each license held.

(d) A licensee may not renew the license after the expiration of the 30 day period specified in subdivision (c).

Added Ch. 1196, Stats. 1990. Effective September 24, 1990. Operative July 1, 1991.

Ceasing Operations: Return of Records

11411. If a registration service ceases operation for any reason, the owner of the service immediately shall notify the department and, upon demand by the department, shall deliver to the department the registration service license, all records kept pursuant to Section 11406, and all customer transactions then in his or her possession, including any fees or receipts for fees due to the department or to the customer.

Added Ch. 1243, Stats. 1992. Effective September 30, 1992.

Filing of Accusation

11413. The suspension, expiration, or cancellation of a registration service license provided for in this chapter shall not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled license as provided in Section 11405 or 11408 or any related rules or regulations, and the department's decision that the license should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license authorized by this division to that licensee or to a business representative of that prior licensee.

Added Sec. 47, Ch. 877, Stats. 1998. Effective January 1, 1999.

CHAPTER 3. AUTOMOBILE DISMANTLERS (Amended Ch. 1106, Stats. 1963. Effective September 20, 1963.)

Unlawful Acts

11500. It shall be unlawful for any person to act as an automobile dismantler without first having an established place of business which meets the requirements set forth in Section 11514 and without first having procured a license or temporary permit issued by the department, or when such license or temporary permit has been canceled, suspended, revoked, invalidated, expired, or the terms and conditions of an agreement effected pursuant to Section 11509.1 have not been fulfilled.

Amended Ch. 619, Stats. 1976. Effective January 1, 1977.

Application for License

11501. Every automobile dismantler shall make application to the department upon the appropriate form for a license containing a general distinguishing number. The applicant shall submit proof of his status as a bona fide automobile dismantler as may reasonably be required by the department.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975.

Refusal to Issue

11502. The department shall have the power and duty to issue and for reasonable cause shown to refuse to issue a license. The department may refuse to any applicant therefor a license provided for herein, if such applicant does not meet the requirements of the terms and provisions of this code relating to the conduct of an automobile dismantling business.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975.

Grounds for Refusal to Issue License

11503. The department may refuse to issue a license to an applicant when it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or has committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The information contained in an application is incorrect.

(g) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

Amended Ch. 428, Stats. 1994. Effective January 1, 1995.

Amended Sec. 48, Ch. 877, Stats. 1998. Effective January 1, 1999.

Additional Grounds for Refusal

11503.1. Any of the causes specified in this chapter as a cause to suspend or revoke the license issued to an automobile dismantler, is cause to refuse

to issue a license to an automobile dismantler.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Interim Refusal to Issue or Suspension of License

11503.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties or the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) When a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal or suspension.

(c) If a conviction, upon which interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Contents of Application

11504. (a) Every applicant who applies for a license pursuant to Section 11501 shall submit an application to the department on the forms prescribed by the department. The applicant shall provide the department with information as to the applicant's character, honesty, integrity, and reputation, as the department may consider necessary. The department, by regulation, shall prescribe what information is required of the applicant for the purposes of this subdivision, and the applicant shall provide that information under penalty of perjury.

In addition to any other information required by the department, the department shall require the applicant to furnish all of the following information on any application for a new license or the renewal of a license, if the applicant is required by other provisions of law to have the following permits, numbers, or plan:

(1) Board of Equalization resale permit number.

(2) Identification number issued by the California Environmental Protection Agency.

(3) A statement indicating that the applicant has either filed an application for a storm water permit or is not required to obtain a storm water permit.

(4) A statement indicating that the applicant has either filed a hazardous materials business plan or is not required to file that plan.

(5) The tax identification number assigned by the Franchise Tax Board.

(b) Upon receipt of an application for a license that is accompanied by the appropriate fee, the department shall, not later than 120 days from the receipt of that application, make a thorough investigation of the information contained in the application, except the information specified in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) Every person holding a license issued pursuant to Section 11501 shall notify the department, within 10 days, of any change in the ownership or

corporate structure of the licensee.

Amended Ch. 428, Stats. 1994. Effective January 1, 1995.

Issuance of License and Special Plates

11505. (a) The department, upon granting a license, shall issue to the applicant a license containing the applicant's name and address and the general distinguishing number assigned to the applicant.

(b) When the department has issued a license pursuant to subdivision (a), the licensee may apply for and the department shall issue special plates which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate so issued shall also contain a number or symbol identifying the plate from every other plate bearing a like general distinguishing number.

(c) The department shall also furnish books and forms as it may determine necessary, which books and forms are and shall remain the property of the department and may be taken up at any time for inspection.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975.

Restricted License

11506. Except where the provisions of this code require the refusal to issue a license, the department may issue a license restricted by conditions to be observed in the exercise of the privilege granted. The terms and conditions to be attached to the exercise of the privilege under such restricted license shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975.

Temporary Permit

11507. Pending the satisfaction of the department that the applicant has met the requirements under this code, it may issue a temporary permit to any person applying for an automobile dismantler license. The temporary permit shall permit the operation by the automobile dismantler for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualification of the applicant to such license. The department may cancel such temporary permit when it has determined or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error. Such temporary permit shall be invalid when canceled or when the applicant's license has been issued or refused.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975.

Expiration and Renewal

11508. (a) Every occupational license and special plate issued under this chapter shall be valid for a period of one year from midnight of the last day of the month of issuance. Renewal of the occupational license and special plates for the ensuing year may be obtained by the person to whom any plates and license were issued upon application to the department and payment of the fee provided in this code.

(b) Except as provided in subdivision (c), every application for the renewal of an occupational license and special plates which expire pursuant to this section shall be made by the person to whom issued not more than 90 days prior to the expiration date, and shall be made by presenting the completed application form provided by the department and by payment of the full annual renewal fee for the occupational license and special plates.

(c) If the application for renewal of the occupational license and special plates is not made by midnight of the expiration date, the application may be

made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each occupational license held. A penalty as specified in Sections 9553 and 9554 shall also be added to each special plate renewed during the 30-day period following expiration of the special plates.

(d) In no event may the licensee renew the occupational license or special plates after the expiration of the 30-day period authorized in subdivision (c).

Amended Ch. 499, Stats. 1984. Effective January 1, 1985.

Suspension or Revocation of License

11509. (a) The department, after notice and hearing, may suspend or revoke the license issued to an automobile dismantler upon the determination that the person to whom the license was issued is not lawfully entitled thereto or has done any of the following:

(1) Made or knowingly or negligently permitted any illegal use of the special plates issued to him or her.

(2) Used a false or fictitious name or knowingly made any false statement or concealed any material fact in any application or other document filed with the department.

(3) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(4) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto.

(5) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(6) Violated any provision of this chapter, except Section 11520, or any rule or regulation adopted pursuant thereto.

(7) Knowingly, repeatedly, or flagrantly violated Section 11520.

(8) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(9) Purchased, concealed, possessed, or otherwise acquired or disposed of a vehicle, or a part thereof, knowing it to be stolen.

(10) Failed to meet and maintain the requirements for issuance of an automobile dismantler's license as provided in this code.

(11) Failed to pay, within 30 days after written demand from the department, any fees or penalties due on vehicles acquired for dismantling which are not the subject of dispute. If the dismantler disputes the validity of the fees or penalties, the 30-day period shall not commence until the department, after review, has determined the fee or penalty to be due.

(12) Submitted a check, draft, or money order to the department for any obligation or fees due the state and it is thereafter dishonored or refused payment upon presentation.

(13) Failed to meet the terms and conditions of a previous agreement entered into pursuant to Section 11509.1.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to an automobile dismantler applicant is cause, after notice and hearing, to suspend or revoke a license and special plates issued to an automobile dismantler.

(c) Except as provided in Section 11509.1, every hearing provided for in this chapter shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Compromise Settlement Agreement

11509.1. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not exceed one thousand dollars (\$1,000) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

Repealed and Added Ch. 1022, Stats. 1985. Effective January 1, 1986.

Reapplication for License

11509.5. A person whose automobile dismantler's license has been revoked or whose application for a license has been denied may reapply for such license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or denying the application; provided, however, that if such decision was based upon paragraph (3), (9), or (10) of subdivision (a) of Section 11509, or Section 11513, an earlier reapplication may be made accompanied by evidence satisfactory to the department that such grounds no longer exist.

Amended Ch. 373, Stats. 1979. Effective January 1, 1980.

Temporary Suspension

11510. The department may, pending a hearing, temporarily suspend the license and special plates issued to an automobile dismantler for a period not to exceed 30 days if the director finds that such action is required in the public interest. In any such case a hearing shall be held and a decision thereon issued within 30 days after notice of temporary suspension.

Every hearing as provided for in this section shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Possession of Stolen Vehicle or Part: Presumption

11511. In any administrative action to revoke or suspend an automobile dismantler's license:

(a) Proof that a stolen vehicle of a type subject to registration under this code, or a part thereof, was found in the possession of, or upon the premises of, the dismantler shall constitute in evidence a prima facie presumption that the dismantler had knowledge that the vehicle was stolen. This presumption may be rebutted by satisfactory evidence that the dismantler has complied with paragraphs (1), (2), (3), and (5) of subdivision (a) of Section 11520.

(b) Proof that a vehicle of a type subject to registration under this code is found in a partially dismantled condition in the possession of, or upon the premises of, the dismantler shall constitute in evidence a prima facie presumption that the vehicle was partially dismantled by the dismantler. The presumption may be rebutted by a business record of the dismantler reflecting the partially dismantled condition of the vehicle on the date of acquisition.

Amended Ch. 466, Stats. 1982. Effective January 1, 1983.

Hearing Upon Refusal

11512. (a) Upon refusal of the department to issue a license to an automobile dismantler the applicant shall be entitled to demand in writing a hearing before the director or his representative within 60 days after notice of refusal.

(b) The hearing shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975.

Established Place of Business Required

11513. (a) The department shall not issue an automobile dismantler's license to any applicant for that license who has not an established place of business as defined in this code. If the automobile dismantler changes the site or location of his or her established place of business, he or she shall immediately upon making the change notify the department. If the automobile dismantler, for any reason ceases to be in possession of an established place of business from and on which he or she conducts the business for which he or she is licensed, he or she shall immediately notify the department and, upon demand by the department, shall deliver to the department the automobile dismantler's license, and all books and forms provided by the department in his or her possession.

(b) Any person licensed under this chapter who has closed his or her established place of business may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business, unless the person has notified the department in writing of another address where service may be made.

Amended Ch. 751, Stats. 1988. Effective January 1, 1989.

Dismantling Site Requirements

11514. (a) An automobile dismantler's established place of business and such other sites or locations as may be operated and maintained by such automobile dismantler in conjunction with his principal established place of business shall have posted, in a place conspicuous to the public in each and every site or location, the license issued by the department and shall have erected or posted thereon such signs or devices providing information relating to the automobile dismantler's name and the location and address of

his established place of business so as to enable any person doing business with such automobile dismantler to identify him properly. Every such sign erected or posted on an established place of business shall have an area of not less than 32 square feet per side displayed and shall contain lettering not less than six inches in height. The sign shall indicate the nature of the dismantler's business by inclusion of "Automobile Dismantler", "Automobile Wrecker", "Motorcycle Dismantler", "Trailer Dismantler", "Vehicle Dismantler", or a combination of such designations on such sign.

(b) Any local authority may provide for a sign and lettering smaller than that specified in subdivision (a); however, no local authority shall require a sign to have an area of less than four square feet per side displayed.

Amended Ch. 579, Stats. 1977. Effective January 1, 1978.

Total Loss Salvage Vehicles

11515. (a) Whenever an insurance company makes a total loss settlement on a total loss salvage vehicle, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee, to the department. An occupational licensee of the department may submit a certificate of license plate destruction in lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar (\$3) fee, shall issue a salvage certificate for the vehicle.

(b) Whenever the owner of a total loss salvage vehicle retains possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar (\$3) fee, shall issue a salvage certificate for the vehicle.

(c) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee to the department.

(d) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee to the department.

(e) Prior to sale or disposal of a total loss salvage vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed salvage certificate and deliver it to the purchaser within 10 days after payment in full for the salvage vehicle and shall also comply with Section 5900. The department shall accept the endorsed salvage certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle which has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a total loss salvage vehicle.

(g) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with intent to defraud, a violation of subdivision (c) is a misdemeanor.

(h) (1) () ¹ A salvage certificate issued under this section shall include a statement that the seller and any subsequent sellers that transfer ownership of a total loss vehicle pursuant to a properly endorsed salvage certificate are required to disclose to the purchaser at, or prior to, the time of sale that the vehicle has been declared a total loss salvage vehicle.

(2) () ² Effective on and after the department includes in the salvage certificate form the statement described in paragraph (1), a seller who fails to make the disclosure described in paragraph (1) () ³ shall be subject to a civil penalty of not more than five hundred dollars (\$500). () ⁴

(3) Nothing in this subdivision affects any other civil remedy provided by law, including, but not limited to, punitive damages. () ⁵

Amended Sec. 1, Ch. 453, Stats. 1998. Effective January 1, 1999.

Amended Sec. 1, Ch. 826, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. "Effective on a date selected by the director, but not later than January 1, 2000, a"

2. "The seller shall be deemed to have met the disclosure requirement described in paragraph (1) if the seller complies with subdivision (e) or prominently posts a notice at his or her place of business that the seller sells total loss salvage vehicles. (3)"

3. "or (2)"

4. "(4)"

5. "(5) This subdivision does not apply to a financial institution, leasing company, an occupational licensee of the department, a self-insurer, an insurance company, or their agents.

(6) Nothing in this subdivision exempts those persons or entities identified in paragraph (5) from any other provision of law in effect prior to January 1, 1999, that requires those persons or entities to disclose to the purchaser that a vehicle has been declared a total loss salvage vehicle."

Sale of Salvage or Nonrepairable Vehicle: Certificate

11515.1. A salvage pool shall sell a vehicle only with either of the following:

(a) A salvage certificate, except those vehicles described in subdivision (f) of Section 11515, which may be sold with a certificate of title.

(b) A nonrepairable vehicle certificate, except those vehicles described in subdivision (f) of Section 11515.2, which may be sold with a certificate of title.

Amended Ch. 1008, Stats. 1994. Effective January 1, 1995. Operative July 1, 1995.

Nonrepairable Vehicles: Procedures

11515.2. (a) Whenever an insurance company makes a total loss settlement on a nonrepairable vehicle and takes possession of that vehicle, either itself or through an agent, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, shall, within 10 days after receipt of title by the insurer, free and clear of all liens, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee, to the department. An occupational licensee of the department may submit a certificate of license plate destruction in lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar (\$3) fee, shall issue a nonrepairable vehicle certificate for the vehicle.

(b) Whenever the owner of a nonrepairable vehicle retains possession of the vehicle, the insurance company shall notify the department of the

retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar (\$3) fee, shall issue a nonrepairable vehicle certificate for the vehicle.

(c) Whenever a nonrepairable vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee to the department.

(d) Whenever a nonrepairable vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar (\$3) fee to the department.

(e) Prior to sale or disposal of a nonrepairable vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed nonrepairable vehicle certificate and deliver it to the purchaser within 10 days after payment in full for the nonrepairable vehicle and shall also comply with Section 5900. The department shall accept the endorsed nonrepairable vehicle certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle that has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a nonrepairable vehicle.

(g) A nonrepairable vehicle certificate shall be conspicuously labeled with the words "NONREPAIRABLE VEHICLE" across the front of the certificate.

(h) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with intent to defraud, a violation of subdivision (c) is a misdemeanor.

Added Ch. 1008, Stats. 1994. Effective January 1, 1995. Operative July 1, 1995.

Special Plates: Automobile Dismantler

11516. (a) Any automobile dismantler owning or controlling any vehicle of a type otherwise required to be registered under this code, may operate or move the vehicle upon the highways without subjecting the vehicle to registration or transfer, or both, solely for the purpose of moving the vehicle from its location to the established place of business of the automobile dismantler or to a scrap processor, if there are displayed on the vehicle special plates issued to the automobile dismantler as provided in this chapter, in addition to other license plates or permits already assigned and attached to the vehicle in the manner prescribed in Article9 (commencing with Section 5200) of Chapter 1 of Division 3.

(b) The provisions of this section do not apply to work or service vehicles owned by an automobile dismantler.

(c) Every owner, upon receipt of a registration card issued for special plates, shall maintain the registration card or a facsimile copy of it with the vehicle bearing the special plates.

Amended Ch. 1220, Stats. 1994. Effective September 30, 1994.

Certificate of Convenience

11517. The department may issue a certificate of convenience to the executor, executrix, administrator or administratrix of the estate of a deceased holder of validly outstanding special plates and license issued under this chapter, or if no executor, executrix, administrator or administratrix had been appointed, and until a certified copy of an order making such appointment is filed with the department, to the widow or other heir otherwise entitled to conduct the business of the deceased, permitting such person to exercise the privileges granted by such special plates and license for a period of one year from and after the date of death, pending, but not later than, disposal of the business and qualifications of the vendor of the business or such surviving widow or heir for such special plates and license under the provisions of this chapter. The department may restrict or condition the license and special plates and attach to the exercise of the privileges thereunder such terms and conditions as in its judgment the protection of the public requires.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Automatic Cancellation of Special Plates and License

11518. The special plates and license provided for in this chapter shall be automatically canceled if any of the following occurs:

(a) The abandonment of the established place of business of the automobile dismantler or the change thereof without notice to the department pursuant to Section 11513.

(b) The voluntary or involuntary surrender for any cause by the licensee of the special plates and license except that a surrender of the special plates and license, the cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11509, and does not affect the department's decision to suspend or revoke the license. The department's decision to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee or any business representative of that licensee.

(c) When the person designated as the licensee has changed, except that the special plates issued to the original licensee may be transferred upon application as provided in Section 11501 and the newly designated licensee, as transferee, shall succeed to the privileges evidenced by the plates until their expiration.

(d) The suspension or revocation of the corporate status of the licensee.

(e) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Notice of Acquisition; Transmittal of Documents

11520. (a) A licensed automobile dismantler who acquired, for the purpose of dismantling, actual possession, as a transferee, of a vehicle of a type subject to registration under this code shall do all of the following:

(1) Within five calendar days, not including the day of acquisition, mail a notice of acquisition to the department at its headquarters.

(2) Within five calendar days, not including the day of acquisition, mail a copy of the notice of acquisition to the Department of Justice at its headquarters.

(3) Not begin dismantling until 10 calendar days have elapsed after mailing the notice of acquisition. In the alternative, dismantling may begin any time after the dismantler complies with paragraph (4).

(4) Deliver to the department, within 90 calendar days of the date of acquisition, the documents evidencing ownership and the license plates last issued for the vehicle. Proof that a registered or certified letter of demand for the documents was sent within 90 days of the date of acquisition to the person from whom the vehicle was acquired may be substituted for documents that cannot otherwise be obtained. A certificate of license plate destruction, when authorized by the director, may be delivered in lieu of the license plates.

(5) Maintain a business record of all vehicles acquired for dismantling. The record shall contain the name and address of the person from whom the vehicle was acquired; the date the vehicle was acquired; the license plate number last assigned to the vehicle; and a brief description of the vehicle, including its make, type, and the vehicle identification number used for registration purposes. The record required by this paragraph shall be a business record of the dismantler separate and distinct from the records maintained in those books and forms furnished by the department.

(b) Paragraphs (1) and (2) of subdivision (a) do not apply to vehicles acquired pursuant to Section 11515, 11515.2, 22851.2, or 22851.3 of this code or Section 3071, 3072, or 3073 of the Civil Code.

Amended Ch. 1008, Stats. 1994. Effective January 1, 1995. Operative July 1, 1995.

Amended Sec. 15, Ch. 945, Stats. 1997. Effective January 1, 1998.

Automobile Dismantler: Advertising

11521. No person required to be licensed as an automobile dismantler under this code shall advertise the services of an automobile dismantler without indicating in the advertisement the occupational license or permit number of the automobile dismantler as issued by the department.

Added Sec. 1, Ch. 265, Stats. 1996. Effective January 1, 1997.

Local Regulation

11522. The provisions of this chapter shall not prevent the local authorities of any city, city and county or county by ordinance, within the exercise of the police power of such city, city and county or county, from imposing local regulations with respect to traffic in loose vehicle parts and vehicle accessories.

Added Ch. 1640, Stats. 1961. Operative January 1, 1962.

Salvage Pools: Records

11540. (a) A salvage pool shall maintain an accurate record of every vehicle it acquires and every vehicle it disposes of, and shall notify the department of the disposition of any vehicle pursuant to Section 5900.

(b) Whenever a salvage pool acquires a total loss salvage vehicle, a nonrepairable vehicle, or a recovered stolen vehicle and the license plates on the vehicle have not been removed pursuant to subdivision (a) of Section 11515, subdivision (a) of Section 11515.2, or any other provision of law, the salvage pool shall, prior to disposing of that vehicle, remove and submit the license plates to the department. The salvage pool shall maintain an accurate record of every license plate it acquires and disposes of, which records shall be maintained for two years and be open for inspection by any peace officer during the regular business hours of that salvage pool.

Amended Ch. 1008, Stats. 1994. Effective January 1, 1995. Operative July 1, 1995.

Salvage Pools: Regulation

11541. The department shall administer and enforce all provisions of this code pertaining to salvage pools.

This section shall become operative on July 1, 1987.

Added Ch. 952, Stats. 1986. Effective July 1, 1987.

CHAPTER 3.5. LESSOR-RETAILERS

License or Temporary Permit Required

11600. It shall be unlawful for any lessor-retailer to make a retail sale of a vehicle of a type subject to registration without having first procured either a vehicle dealer license or a lessor-retailer license or temporary permit issued by the department or when such license or temporary permit issued by the department has been canceled, suspended, revoked, or invalidated or has expired.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Application for License

11601. (a) Every lessor-retailer who sells at retail a vehicle of a type subject to registration shall make application to the department for a license. The applicant shall submit proof of his status as a bona fide lessor-retailer as may reasonably be required by the department.

(b) An application shall be made for the principal place of business, and a separate branch office application shall be made for each branch office location of the licensee as shall be operated and maintained by the applicant in conjunction with the retail sale or sales of vehicles.

(c) "Principal place of business," for the purposes of this chapter, means the place designated by the lessor-retailer as the main business or office location in California whether or not retail sales are made from such location.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Contents of Application

11602. (a) The department shall prescribe and provide forms to be used for application for licenses to be issued under the terms and provisions of this chapter and require of such applicants, where appropriate as a condition precedent to issuance of such license, such information, including but not limited to, fingerprints and personal history statements, touching on and concerning the applicant's character, honesty, integrity and reputation as it may consider necessary; provided, however, that every application for a lessor-retailer license shall contain, in addition to such information that the department may require, a statement of the following facts:

(1) The name and residence address of the applicant and the trade name, if any, under which he intends to conduct his business; and if the applicant be a partnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted; and if the applicant be a corporation, the name of the corporation and the name and address of each of its principal officers and directors.

(2) A complete description, including the city, town or village with the street and number, if any, of its principal place of business in California and such other and additional branch location or locations.

(b) Upon receipt of an application accompanied with the appropriate fee, the department shall make a thorough investigation of the information contained in the application.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Issuance or Refusal of License

11603. (a) The department may issue, or for reasonable cause shown, refuse to issue, a license to any applicant applying for a lessor-retailer license or branch office location.

(b) The license shall contain the applicant's name, location address and the general distinguishing number assigned to the applicant.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Refusal to Issue: Grounds

11604. The department may refuse to issue a lessor-retailer license when it makes any of the following determinations:

(a) The applicant has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under the authority of this division.

(b) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this division which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(c) The applicant was previously a business representative whose license issued under this division was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(d) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this division, was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(e) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(f) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(g) The information contained in the application is incorrect.

(h) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

(i) The applicant does not have a principal place of business in California.

Amended Sec. 49, Ch. 877, Stats. 1998. Effective January 1, 1999.

***Suspension, Revocation, or Refusal to Issue License:
Additional Grounds***

11604.1. Any cause specified in this chapter as a cause to suspend or revoke the license issued to a lessor-retailer is a cause to refuse to issue a license to a lessor-retailer.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Interim Refusal to Issue or Suspension of License

11604.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) When a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal to issue or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Hearing Upon Refusal

11605. (a) Upon refusal of the department to issue a license to a lessor-retailer, the applicant shall be entitled to demand in writing a hearing before the director or his representative within 60 days after notice of refusal.

(b) The hearing shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Probationary License

11606. Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Temporary Permit

11607. Pending the satisfaction of the department that the applicant has met the requirements under this chapter, it may issue a temporary permit to any person applying for a lessor-retailer license or branch office location. The temporary permit shall permit the operation by the lessor-retailer while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to such license. The department may cancel such temporary permit when it has determined or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error. Such temporary permit shall be invalid when canceled or when the applicant's license has been issued or refused.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Certificate of Convenience

11608. The department may issue a certificate of convenience to the executor, executrix, administrator or administratrix of the estate of a deceased holder of a valid license issued under this chapter, or if no executor, executrix, administrator or administratrix has been appointed, and until a certified copy of an order making such appointment is filed with the department, to the widow or other heir otherwise entitled to conduct the business of the deceased, permitting such person to exercise the privileges granted by such license for a period of one year from and after the date of death and necessary one-year renewals thereafter, pending, but not later

than, disposal of the business and qualification of the vendee of the business or such surviving widow, heir or other persons for such license under the provisions of this chapter. The department may restrict or condition the license and attach to the exercise of the privileges thereunder such terms and conditions as in its judgment the protection of the public requires.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Posting of License; Other Sign Requirements

11609. Each office location operated and maintained by a lessor-retailer in conjunction with its retail sale of a vehicle or vehicles shall have posted in a place conspicuous to the public the license issued by the department to the lessor, and shall have erected or posted thereon such signs or devices providing information relating to the lessor-retailer's name, the office location and the office address, to enable any person doing business with such lessor to identify him properly.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Notice to Public: Inspection of Vehicle

11609.5. Every lessor-retailer who displays or offers one or more used vehicles for sale at retail shall post a notice not less than 8 inches high and 10 inches wide, in a place conspicuous to the public, which states the following:

"The prospective purchaser of a vehicle may, at his or her own expense and with the approval of the lessor-retailer, have the vehicle inspected by an independent third party either on or off these premises."

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Change of Principal Place of Business or Branch Office

11610. (a) If the lessor-retailer changes the location of its principal place of business or any branch office location in California, the lessor-retailer shall immediately upon making the change notify the department.

(b) If a lessor-retailer, for any reason, ceases to be in possession of its principal place of business or any branch office location, the lessor-retailer shall immediately notify the department, and shall deliver to the department the lessor-retailer license issued for the location, and, upon demand, all report of sale books in his or her possession.

(c) Any person licensed under this chapter who has closed his or her principal place of business may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business, unless the person has notified the department in writing of another address where service may be made.

Amended Ch. 216, Stats. 1990. Effective January 1, 1991.

Bond

11612. (a) Before any lessor-retailer license shall be issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond meeting the same requirements as specified for a vehicle dealer's license in Sections 11710 and 11710.2.

(b) Any cause of action or claim specified in Section 11711 against a vehicle dealer's bond shall also be a cause of action or claim against a lessor-retailer's bond.

Amended Ch. 517, Stats. 1982. Effective January 1, 1983.

Suspension or Revocation of License

11613. (a) The department, after notice and hearing, may suspend or revoke the license issued to a lessor-retailer upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has

done any of following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.

(2) Used a false or fictitious name, knowingly made any false statement or knowingly concealed any material fact in any application for the registration of a vehicle, or otherwise committed a fraud in the application.

(3) Knowingly purchased, sold or otherwise acquired or disposed of a stolen motor vehicle.

(4) Violated any provision of Division 3 (commencing with Section 4000) or a rule or regulation adopted pursuant thereto.

(5) Violated any provision of Division 4 (commencing with Section 10500) or rule or regulation adopted pursuant thereto.

(6) Violated any provision of this chapter or rule or regulation adopted pursuant thereto.

(7) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or rule or regulation adopted pursuant thereto under the authority of Section 1651.

(8) Submitted a check, draft or money order to the department for any obligation or fee due the state which was thereafter dishonored or refused payment upon presentation.

(9) Caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on or fraudulent representations made to that person in the sale of a vehicle or parts or accessories thereof.

For purposes of this subdivision, “fraud” includes any act or omission which is included within the definition of either “actual fraud” or “constructive fraud” as defined in Sections 1572 and 1573 of the Civil Code, and “deceit” has the same meaning as defined in Section 1710 of the Civil Code. In addition, “fraud” and “deceit” include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this subdivision, “person” also includes a governmental entity.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a lessor-retailer applicant is cause to suspend or revoke a license issued to a lessor-retailer.

(c) Every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Compromise Settlement Agreement

11613.5. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not exceed one thousand dollars (\$1,000) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

(b) A compromise settlement agreement may be entered before, during, or

after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

Added Ch. 1022, Stats. 1985. Effective January 1, 1986.

Unlawful Acts

11614. No lessor-retailer licensed under this chapter may do any of the following in connection with any activity for which this license is required:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement that is untrue or misleading and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or make or disseminate, or cause to be made or disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle, or service so advertised, at the price stated therein, or as so advertised.

(b) Advertise, or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) Fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise any specific vehicle for sale without identifying the vehicle by () ¹ ***its model, model year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California.***

(e) Advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding thirty-five dollars (\$35) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars (\$35).

(f) (1) Fail to disclose, in an advertisement of a vehicle for sale, that there will be added to the advertised total price, at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any

statute, finance charges, or any dealer documentary preparation charge.

(2) For purposes of paragraph (1), “advertisement” means any advertisement in a newspaper, magazine, direct mail publication, or handbill that is two or more columns in width or one column in width and more than seven inches in length, or on any () ² **Web** page of a lessor-retailer’s () ² **Web** site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(g) Advertise or otherwise represent, or knowingly allow to be advertised or represented on the lessor-retailer’s behalf or at the lessor-retailer’s place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. ***The terms “no downpayment,” “zero down delivers,” or similar terms shall not be advertised unless the vehicle will be sold to any qualified purchaser without a prior payment of any kind or trade-in.***

(h) Refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars (\$35) for the documentary preparation charge and thirty-five dollars (\$35) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) Engage in the business for which the licensee is licensed without having in force and effect a bond required by Section 11612.

(j) Engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and any branch office location required by this chapter.

(k) Permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(l) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) Represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.

(n) Advertise free merchandise, gifts, or services provided by a lessor-retailer contingent on the purchase of a vehicle. “Free” includes merchandise or services offered for sale at a price less than the lessor-retailer’s cost of the merchandise or services.

(o) Advertise vehicles and related goods or services with the intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(p) Use the term “rebate” or similar words such as “cash back” in advertising the sale of a vehicle.

(q) Require a person to pay a higher price for a vehicle and related goods

or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, “cash price” has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(r) Misrepresent the authority of a representative or agent to negotiate the final terms of a transaction.

(s) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(t) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is “fully factory equipped.”

(u) Advertise any underselling claim, such as “we have the lowest prices” or “we will beat any dealer’s price,” unless the lessor-retailer has conducted a recent survey showing that the lessor-retailer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claim. The substantiating records shall be made available to the department upon request.

(v) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission’s Buyer’s Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(w) This section shall become operative on July 1, 2001.

Added Sec. 2, Ch. 773, Stats. 2000. Effective July 1, 2001.

Amended Sec. 1, Ch. 947, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. “either its vehicle identification number or license number”
2. “web”

Unlawful Activities

11614.1. *No lessor-retailer licensed under this chapter may do any of the following in connection with any activity for which this license is required:*

(a) Use a picture in connection with any advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

(b) Advertise a vehicle for sale that was used by the selling lessor-retailer in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as “new.”

(c) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as “used,” “previously owned,” or a similar term that indicates that the vehicle is used, as defined in this code.

(d) Use the terms “on approved credit” or “on credit approval” in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

(e) Advertise an amount described by terms such as “unpaid balance” or “balance can be financed” unless the total sale price is clearly and conspicuously disclosed and is in close proximity to the

advertised balance.

(f) Advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

(g) Advertise claims such as “everyone financed,” “no credit rejected,” or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

(h) Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. A statement such as “\$___ deliver,” is an example of an advertised downpayment.

(i) Fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

Added Sec. 2, Ch. 947, Stats. 2002. Effective January 1, 2003.

Additional Unlawful Acts

11615. It shall be unlawful and a violation of this code for a lessor-retailer licensed under this chapter when selling at retail a vehicle in a transaction for which this license is required:

(a) To deliver, following sale, a vehicle for operation on California highways, if such vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000) of this code.

(b) To fail to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(c) To violate any of the terms or provisions of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or rules and regulations adopted pursuant thereto or adopted pursuant to Section 1651 of this code.

(d) To take a vehicle in trade in part or total payment for a vehicle sold by the lessor-retailer.

(e) To sell a vehicle which has not been previously leased, bailed or rented or acquired or contracted for lease or rental by the lessor-retailer.

(f) To display a vehicle for sale at a location other than the principal place of business or branch office authorized by the department for that lessor-retailer.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Sales Tax Payment

11615.5. It is unlawful and a violation of this code for a person holding a license under this chapter to make a retail sale of a motor vehicle, except to the lessee of such vehicle, required to be registered pursuant to Division 3 (commencing with Section 4000) or subject to identification pursuant to Division 16.5 (commencing with Section 38000) if such person files with the department a report of sale as provided in Section 4456 with respect to such retail sale, without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

Amended Ch. 373, Stats. 1979. Effective January 1, 1980.

Refund of Excess Fees

11616. If a purchaser of a vehicle pays to the lessor-retailer an amount

for the licensing or transfer of title of the vehicle, which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the lessor-retailer to the state in order to avoid penalties that would have accrued because of late payment of such fees, the lessor-retailer shall return such excess amount to the purchaser, whether or not such purchaser requests the return of the excess amount.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Automatic Cancellation of License

11617. (a) The license provided for in this chapter shall be automatically canceled upon the happening of any of the following:

(1) The abandonment of the principal place of business of the lessor-retailer or the change thereof without notice to the department as provided in Section 11610.

(2) The failure of the licensee to maintain an adequate bond or to procure and file another bond as required by Section 11612 prior to the effective date of the termination by the surety of any existing bond.

(3) The voluntary or involuntary surrender for any cause by the licensee of the license, except that a surrender of the license, or cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11613, and does not affect the department's decision to suspend or revoke the license. The department's determination to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee, or any business representative of that licensee.

(4) Notification to the department that the person designated as licensee has changed.

(5) The suspension or cancellation of the corporate status of the licensee.

(6) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

(b) The branch office location license provided for in this chapter shall be automatically canceled upon the abandonment of the branch office location of the lessor-retailer or the change of that branch office without notice to the department as provided in Section 11610.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Temporary Suspension

11618. The department may, pending a hearing, temporarily suspend the license issued to a lessor-retailer for a period not to exceed 30 days, if the director finds that such action is required in the public interest. In any such case a hearing shall be held and a decision thereof issued within 30 days after notice of the temporary suspension.

Every hearing as provided for in this section shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Ch. 1284, Stats. 1976. Effective January 1, 1977.

Expiration and Renewal

11620. (a) Every occupational license issued under this chapter shall be valid for a period of one year from midnight of the last day of the month of issuance. Except as provided in subdivision (c), renewal of an occupational license for the ensuing year may be obtained by the person to whom the occupational license was issued upon application to the department and

payment of the fee provided in this code.

(b) Every application for the renewal of an occupational license which expires pursuant to this section shall be made by the person to whom issued not more than 90 days prior to the expiration date, and shall be made by presenting the completed application form provided by the department and by payment of the full annual renewal fee for the occupational license.

(c) If the application for renewal of the occupational license is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each occupational license held.

(d) In no event may the licensee renew the occupational license after the expiration of the 30-day period authorized in subdivision (c).

Amended Ch. 499, Stats. 1984. Effective January 1, 1985.

CHAPTER 4. MANUFACTURERS, TRANSPORTERS, DEALERS, AND SALESMEN

Article 1. Issuance of Licenses and Certificates to Manufacturers, Transporters, and Dealers

License or Temporary Permit Required

11700. No person shall act as a dealer, remanufacturer, manufacturer, or transporter, or as a manufacturer branch, remanufacturer branch, distributor, or distributor branch, without having first been issued a license as required in Section 11701 or temporary permit issued by the department, except that, when the license or temporary permit has been canceled, suspended, or revoked or has expired, any vehicle in the dealer's inventory and owned by the dealer when the dealer ceased to be licensed may be sold at wholesale to a licensed dealer. The former licensee shall give the purchasing dealer a statement of facts stating that the seller is not a licensed dealer. Any vehicle on consignment with the dealer when the dealer ceased to be licensed shall be returned to the consignor. Any vehicle in the dealer's possession, but not owned by the dealer and not on consignment when the dealer ceased to be licensed, shall be returned to the owner of the vehicle.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Exemption

11700.1. A dealer who does not have an established place of business in this state but who is currently authorized to do business as, and who has an established place of business as, a vehicle dealer in another state is not subject to licensure under this Article if the business transacted in California is limited to the importation of vehicles for sale to, or the export of vehicles purchased from, persons licensed in California under this chapter.

Added Ch. 1088, Stats. 1979. Effective September 28, 1979.

Dealer's License: Autobroker's Endorsement: Requirements and Prohibitions

11700.2. A dealer who obtains an autobroker's endorsement to his or her dealer's license is subject to all of the licensing, advertising, and other statutory and regulatory requirements and prohibitions applicable to a dealer, regardless of whether that dealer acts as the buyer of a vehicle, the seller of a vehicle, or provides brokering services on behalf of another or others for the purpose of arranging, negotiating, assisting, or effectuating the sale of a vehicle not owned by that dealer.

Added Sec. 4, Ch. 211, Stats. 1995. Effective January 1, 1996.

Prohibition Against Aiding or Abetting Unlawful Activity

11700.3. ***No person may aid and abet a person in the performance of any act in violation of this chapter.***

Added Sec. 1, Ch. 407, Stats. 2002. Effective January 1, 2003.

Application for License

11701. Every manufacturer of, and manufacturer branch, remanufacturer of, and remanufacturer branch, distributor of, and distributor branch, transporter of, or dealer in vehicles of a type subject to registration, or snowmobiles, () motorcycles, ***or trailers*** of a type subject to identification, shall make application to the department for a license containing a general distinguishing number. The applicant shall submit proof of his or her status as a bona fide manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer as may reasonably be required by the department.

Amended Sec. 9, Ch. 758, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "or"

Issuance or Refusal of License

11702. The department may issue, or for reasonable cause shown, refuse to issue a license to any applicant applying for a manufacturer's, manufacturer's branch, remanufacturer's, remanufacturer's branch, distributor's, distributor's branch, transporter's, or dealer's license.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Refusal to Issue: Grounds

11703. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, if it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative of a business whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative of the business was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of the provisions of this code, would be ineligible for a license and, by licensing the business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for

cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The information contained in the application is incorrect.

(g) Upon investigation, the business history required by Section 11704 contains incomplete or incorrect information, or reflects substantial business irregularities.

(h) A decision of the department to cancel, suspend, or revoke a license has been made and the applicant was a business representative of the business regulated under that license.

Amended Sec. 50, Ch. 877, Stats. 1998. Effective January 1, 1999.

Refusal to Issue: Additional Grounds

11703.1. Any of the causes specified in this chapter as a cause to suspend or revoke the license issued to a dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter, is cause to refuse to issue a license to a dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Refusal to Issue: Unsatisfied Final Judgment

11703.2. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, when it determines that the applicant has outstanding an unsatisfied final judgment rendered in connection with the purchase, sale, or lease of any vehicle.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Reapplication

11703.3. A person whose license has been revoked or application for a license has been denied may reapply for a license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or denying the application; except that if the decision was entered under the authority of subdivision (a), (b), (c), or (g) of Section 11703, or 11703.2, or paragraph (6) of subdivision (a) of Section 11705, a reapplication accompanied by evidence satisfactory to the department that such grounds no longer exist may be made earlier than such one-year period.

Amended Ch. 934, Stats. 1976. Effective January 1, 1977.

Additional Grounds for Refusal

11703.4. The department may refuse to issue a license to a dealer when it determines that an applicant for a dealer's license has failed to effectively endorse an authorization for disclosure of an account or accounts relating to the operation of the dealership as provided for in Section 7473 of the Government Code.

Added Ch. 1320, Stats. 1976. Effective January 1, 1977.

Application for License

11704. (a) Every applicant who applies for a license pursuant to Section 11701 shall submit an application to the department on the forms prescribed by the department. Such applicant shall provide the department with information as to the applicant's character, honesty, integrity, and reputation, as the department may consider necessary. The department, by regulation, shall prescribe what information is required of such an applicant for the purposes of this subdivision.

(b) Upon receipt of an application for a license which is accompanied by the appropriate fee, the department shall, within 120 days, make a thorough investigation of the information contained in the application.

(c) Every person holding a license issued pursuant to Section 11701 shall notify the department, within 10 days, of any change in the ownership or corporate structure of the licensee.

Repealed and added Ch. 452, Stats. 1977. Effective January 1, 1978.

License and Renewal: Education and Examination Requirement

11704.5. (a) Except as provided in subdivision (e), every person who applies for a dealer's license pursuant to Section 11701 for the purpose of transacting sales of used vehicles on a retail or wholesale basis only shall be required to take and successfully complete a written examination prepared and administered by the department before a license may be issued. The examination shall include, but need not be limited to, all of the following laws and subjects:

(1) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(2) Advertising.

(3) Odometers.

(4) Vehicle licensing and registration.

(5) Branch locations.

(6) Offsite sales.

(7) Unlawful dealer activities.

(8) Handling, completion, and disposition of departmental forms.

(b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:

(1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.

(2) Motor vehicle financing.

(3) Truth in lending.

(4) Sales and use taxes.

(5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(6) Advertising.

(7) Odometers.

(8) Vehicle licensing and registration.

(9) Branch locations.

(10) Offsite sales.

(11) Unlawful dealer activities.

(12) Air pollution control requirements.

(13) Regulations of the Bureau of Automotive Repair.

(14) Handling, completion, and disposition of departmental forms.

(c) (1) Except as provided in paragraph (2) or (3), every dealer who is required to complete a written examination and an educational program pursuant to subdivisions (a) and (b) and who is thereafter issued a dealer's license shall successfully complete, every two years after issuance of that license, an educational program of not less than four hours that offers instruction in the subjects listed under subdivision (a) and the topics listed under subdivision (b), in order to maintain or renew that license.

(2) A dealer is not required to complete the educational program set forth in paragraph (1) if the educational program is completed by a managerial employee employed by the dealer.

(3) Paragraph (1) does not apply to dealers who sell vehicles on a wholesale basis only and who, in a one-year period, deal with less than 50 vehicles that are subject to registration.

(d) Instruction described in subdivisions (b) and (c) may be provided by generally accredited educational institutions, private vocational schools, and educational programs and seminars offered by professional societies, organizations, trade associations, and other educational and technical programs that meet the requirements of this section or by the department.

(e) This section does not apply to any of the following:

(1) An applicant for a new vehicle dealer's license or any employee of that dealer.

(2) A person who holds a valid license as an automobile dismantler, an employee of that dismantler, or an applicant for an automobile dismantler's license.

(3) An applicant for a motorcycle only dealer's license or any employee of that dealer.

(4) An applicant for a trailer only dealer's license or any employee of that dealer.

Added Sec. 3, Ch. 1008, Stats. 1996. Effective January 1, 1997.

Amended Sec. 10, Ch. 619, Stats. 1997. Effective January 1, 1998.

Amended Sec. 1, Ch. 230, Stats. 1999. Effective January 1, 2000.

Amended Sec. 1, Ch. 221, Stats. 2000. Effective January 1, 2001.

Amended Sec. 1, Ch. 93, Stats. 2001. Effective January 1, 2002.

License: Examination Fee

11704.7. Every person who applies to the department to take or retake the examination required under Section 11704.5 shall pay to the department a fee of sixteen dollars (\$16).

Added Sec. 4, Ch. 1008, Stats. 1996. Effective January 1, 1997.

Suspension or Revocation

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.

(2) Made, or knowingly or negligently permitted, any illegal use of the special plates issued to the licensee.

(3) Used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in any application for the registration of a vehicle, or otherwise committed a fraud in the application.

(4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant thereto.

(8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

(9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(10) Violated any provision of Article 1 (commencing with Section 11700)

of Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.

(11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

(13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.

(14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

For purposes of this paragraph, “fraud” includes any act or omission which is included within the definition of either “actual fraud” or “constructive fraud” as defined in Sections 1572 and 1573 of the Civil Code, and “deceit” has the same meaning as defined in Section 1710 of the Civil Code. In addition, “fraud” and “deceit” include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, “person” also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 1220, Stats. 1994. Effective September 30, 1994.

Suspension or Revocation: Warranty Violation

11705.4. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto or has willfully violated the terms and conditions of any warranty responsibilities as set forth in Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

(b) Every hearing as provided for in this section shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 873, Stats. 1977. Effective January 1, 1978.

Suspension or Revocation: Additional Ground

11705.5. (a) The department, after notice and hearing, may suspend or revoke the license issued to a manufacturer upon determining that the manufacturer has violated paragraph (2) of subdivision (b) of Section 6262 of

the Revenue and Taxation Code.

(b) The hearing provided for in subdivision (a) shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Ch. 1362, Stats. 1990. Effective September 27, 1990. Operative October 15, 1990.

Temporary Suspension

11706. The department may, pending a hearing, temporarily suspend the license and special plates issued to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, for a period not to exceed 30 days, if the director finds that such action is required in the public interest. In any such case, a hearing shall be held and a decision thereon issued within 30 days after notice of the temporary suspension.

Every hearing, as provided for in this section, shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Compromise Settlement Agreement

11707. (a) After the filing of an accusation under this article, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. Except as provided in Section 11728, the monetary penalty shall not exceed one thousand dollars (\$1,000) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this article.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law, notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

Amended Ch. 90, Stats. 1990. Effective May 9, 1990. Operative July 1, 1990.

Refusal to Issue License and Special Plates—Hearings

11708. (a) Upon refusal of the department to issue a license and special plates to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or

dealer, the applicant shall be entitled to demand, in writing, a hearing before the director or his or her representative within 60 days after notice of refusal.

(b) The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Established Place of Business: Posting

11709. (a) A dealer's established place of business, and other sites or locations as may be operated and maintained by the dealer in conjunction with his or her established place of business, shall have posted, in a place conspicuous to the public in each and every location, the license issued by the department to the dealer and to each salesman employed by the dealer and shall have erected or posted thereon signs or devices providing information relating to the dealer's name and the location and address of the dealer's established place of business to enable any person doing business with the dealer to identify him or her properly. Every such sign erected or posted, on an established place of business, shall have an area of not less than two square feet per side displayed and shall contain lettering of sufficient size to enable the sign to be read from a distance of at least 50 feet. This section shall not apply to a dealer who is a wholesaler involved for profit only in the sale of vehicles between licensed dealers.

(b) Notwithstanding Section 11704 and this section, a dealer may display vehicles at a fair, exposition, or similar exhibit without securing a branch license, if no actual sales are made at those events and the display does not exceed 30 days.

(c) All vehicles displayed pursuant to subdivision (b) or (e) shall be identified by a sign or device providing information relating to the dealer's name and the location and address of the dealer's established place of business.

(d) This section shall not be applicable to a dealer who deals only in off-highway vehicles subject to identification, as defined in Section 38012.

(e) Notwithstanding Section 11704 and this section, a vessel dealer may display a trailer and may sell a trailer in conjunction with the sale of a vessel at a fair, exposition, or similar exhibit without securing a branch license, if the display does not exceed 30 days.

Amended Ch. 147, Stats. 1989. Effective January 1, 1990.

Notice to Public: Inspection of Vehicle

11709.1. Every dealer who displays or offers one or more used vehicles for sale at retail shall post a notice not less than 8 inches high and 10 inches wide, in a place conspicuous to the public, which states the following:

"The prospective purchaser of a vehicle may, at his or her own expense and with the approval of the dealer, have the vehicle inspected by an independent third party either on or off these premises."

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Notice to Public: No Cancellation Period

11709.2. Every dealer shall conspicuously display a notice, not less than eight inches high and 10 inches wide, in each sales office and sales cubicle of a dealer's established place of business where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees, and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:

"NO COOLING-OFF PERIOD"

California law does not provide for a “cooling-off” or other cancellation period for vehicle lease or purchase contracts. Therefore, you cannot later cancel such a contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud.”

Added Ch. 1092, Stats. 1993. Effective January 1, 1994. Operative July 1, 1994.

Amended Ch. 146, Stats. 1994. Effective January 1, 1995.

Advertising Requirements: Vehicles for Sale

11709.3. (a) Every dealer shall clearly and conspicuously display in its showroom at its established place of business, in a place that is easily accessible to prospective purchasers, a clear and conspicuous listing of each vehicle that the dealer has advertised for sale if the vehicle meets all of the following requirements:

(1) The vehicle is advertised for sale in a newspaper or other publication of general circulation, or in any other advertising medium that is disseminated to the public generally, including, but not limited to, radio, television, or the Internet.

(2) The vehicle is advertised at a specific price and is required pursuant to subdivision (a) of Section 11713.1 to be identified in the advertisement by its vehicle identification number or license number.

(3) The vehicle has not been sold or leased during the time that the advertised price is valid.

(4) The vehicle does not clearly and conspicuously have displayed on or in it the advertised price.

(b) The listing required by subdivision (a) may be satisfied by clearly and conspicuously posting in the showroom a complete copy of any print advertisement that includes vehicles currently advertised for sale or by clearly and conspicuously displaying in the showroom a list of currently advertised vehicles described by make, model, model-year, vehicle identification number, or license number, and the advertised price.

Added Sec. 1, Ch. 441, Stats. 2001. Effective January 1, 2002.

Bond; Service of Process

11710. (a) Before any dealer's or remanufacturer's license is issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond executed by an admitted surety insurer, approved as to form by the Attorney General, and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a purchaser, seller, financing agency, or governmental agency.

(b) () ¹ ***A dealer's bond shall be in the amount of fifty thousand dollars (\$50,000) except the bond of a dealer who deals exclusively in motorcycles shall be in the amount of ten thousand dollars (\$10,000). Before the license is renewed by the department, the dealer, other than a dealer who deals exclusively in motorcycles, shall procure and file a bond in the amount of fifty thousand dollars (\$50,000). A remanufacturer bond shall be in the amount of fifty thousand dollars (\$50,000).***

(c) Liability under the bond is to remain at full value. If the amount of liability under the bond is decreased or there is outstanding a final court judgment for which the dealer or remanufacturer and sureties are liable, the dealer's or remanufacturer's license shall be automatically suspended. In order to reinstate the license and special plates, the licensee shall either file an additional bond or restore the bond on file to the original amount, or shall

terminate the outstanding judgment for which the dealer or remanufacturer and sureties are liable.

(d) A dealer's or remanufacturer's license, or renewal of the license, shall not be issued to any applicant therefor, unless and until the applicant files with the department a good and sufficient instrument, in writing, in which the applicant appoints the director as the true and lawful agent of the applicant upon whom all process may be served in any action, or actions, which may thereafter be commenced against the applicant, arising out of any claim for damages suffered by any firm, person, association, or corporation, by reason of the violation of the applicant of any of the terms and provisions of this code or any condition of the dealer's or remanufacturer's bond. The applicant shall stipulate and agree in the appointment that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in () ² *that* case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree, in writing, that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond. The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case where the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars (\$5) shall also be paid to the director at the time of service of the copy of the summons and complaint. Service on the director shall be a sufficient service on the licensee if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt. The director shall keep a record of all process so served upon the director, which record shall show the day and hour of service and shall retain the summons and complaint so served on file. Where the licensee is served with process by service upon the director, the licensee shall have and be allowed 30 days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. However, for purposes of venue, where the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had an established place of business.

Amended Sec. 1, Ch. 303, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. "A dealer bond shall be in the amount of ten thousand dollars (\$10,000). A dealer holding a dealer's license that was issued before July 1, 1990, that does not expire until 1990 or 1991, which has a bond in the amount of five thousand dollars (\$5,000) on file with the department, and whose license and bond remain continuously in full force and effect until the expiration of the license in 1990 or 1991, may continue to conduct business until that expiration date. Before the license is renewed by the department, the dealer shall procure and file a bond in the amount of ten thousand dollars (\$10,000). A remanufacturer bond shall be in the amount of twenty-five thousand dollars (\$25,000)."

2. "such a"

Lower Bond Amount: Specified Wholesale-Only Dealers

11710.1. *Notwithstanding subdivision (b) of Section 11710, the bond amount of a dealer who sells vehicles on a wholesale basis only, and who sells fewer than 25 vehicles per year, shall be ten thousand dollars (\$10,000).*

Added Sec. 1, Ch. 1110, Stats. 2002. Effective January 1, 2003.

Return of Cash Deposit

11710.2. If a deposit is given instead of the bond required by Section 11710 both of the following apply:

(a) The director may order the deposit returned at the expiration of three years from the date an applicant for a dealer's license who has operated a business of selling vehicles under a temporary permit has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a () superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(b) If either the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

Amended Ch. 216, Stats. 1990. Effective January 1, 1991.

Amended Sec. 600, Ch. 784, Stats. 2002. Effective January 1, 2003.

The 2002 amendment at the point(s) indicated, deleted the following "municipal or"

Fraud and Other Violations of Law:**Failure to Pay for Vehicles: Priority of Claims**

11711. (a) If any person (1) shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one of such dealer's salesmen acting for the dealer, in his behalf, or within the scope of the employment of such salesman and such person has possession of a written instrument furnished by the licensee, containing stipulated provisions and guarantees which the person believes have been violated by the licensee, or (2) if any person shall suffer any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of Division 3 (commencing with Section 4000) of this code, or (3) if any person is not paid for a vehicle sold to and purchased by a licensee, then any such person shall have a right of action against such dealer, his salesman, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

(b) If the state or any political subdivision thereof shall suffer any loss or damage by reason of any fraud practiced on the state or fraudulent representation made to the state by a licensed dealer, or one of such dealer's representatives acting for the dealer, in his behalf, or within the scope of employment of such representatives, or shall suffer any loss or damage by reason of the violation of such dealer or representative of any of the provisions of Division 3 (commencing with Section 4000) of this code, or Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code, the state or any political subdivision thereof, through the department, shall have a right of action against such dealer, his representative, and the surety upon the dealer's bond in an amount not to exceed the value of the vehicles involved.

(c) The failure of a dealer upon demand to pay the fees and penalties

determined to be due as provided in Section 4456 hereof is declared to be a violation of Division 3 (commencing with Section 4000) of this code, and Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code and to constitute loss or damage to the state in the amounts of such fees and penalties determined to be due and not paid.

(d) The claims of the State under subdivision (b) shall be satisfied first and entitled to preference over all claims under subdivision (a).

(e) The claims of any person under subdivision (a) who is not a licensee shall be satisfied first and entitled to preference over all other claims under subdivision (a).

Amended Ch. 1106, Stats. 1972. Effective March 7, 1973.

Unlicensed Dealer or Lessor-Retailer Activity

11711.3. A person acting as a dealer, who was not licensed as a dealer as required by this article, or a person acting as a lessor-retailer, who was not licensed as a lessor-retailer as required by Chapter 3.5 (commencing with Section 11600), may not enforce any security interest or bring or maintain any action in law or equity to recover any money or property or obtain other relief from the purchaser or lessee of a vehicle in connection with a transaction in which the person was, at the time at the transaction, required to be licensed as a dealer or a lessor-retailer.

Added Sec. 2, Ch. 407, Stats. 2002. Effective January 1, 2003.

Change of Established Place of Business

11712. (a) The department shall not issue a dealer's license to any applicant therefor who has not an established place of business as defined in this code. Should the dealer change the site or location of his established place of business, he or she shall, immediately upon making that change, so notify the department. Should a dealer for any reason whatsoever, cease to be in possession of an established place of business from and on which he or she conducts the business for which he or she is licensed, he or she shall immediately notify the department and, upon demand by the department, shall deliver to the department the dealer's license, dealer's special plate or plates, and all report of sale books in his or her possession.

(b) Should the dealer change to, or add another franchise for the sale of new vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new vehicles, he or she shall immediately so notify the department.

(c) Any person licensed under this Article who has closed his or her established place of business may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business or at the mailing address of record if different from the established place of business, unless the person has notified the department in writing of another address where service may be made.

Amended Ch. 751, Stats. 1988. Effective January 1, 1989.

Motorcycle and Light Duty Truck Sales: Required Price Information

11712.5. It is unlawful and a violation of this code for a dealer issued a license pursuant to this Article to sell, offer for sale, or display any new vehicle, as follows:

(a) A new motorcycle unless there is securely attached thereto a statement as required by Section 24014.

(b) A new light duty truck with a manufacturer's gross vehicle weight rating of 8,500 pounds or less unless there is affixed to the light duty truck

the label required by Section 24013.5.

Amended Ch. 418, Stats. 1987. Effective January 1, 1988.

Unlawful Acts

11713. No holder of any license issued under this Article shall do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) (1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

(c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the

first purchaser of the vehicle.

(h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following the sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000). This subdivision does not apply to the sale of a leased vehicle to the lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.

(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. ***The terms “no downpayment,” “zero down delivers,” or similar terms shall not be advertised unless the vehicle will be sold to any qualified purchaser without a prior payment of any kind or trade-in.***

(l) Participate in the sale of a vehicle required to be reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of the full sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.

(q) Consign for sale to another dealer a new vehicle.

(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the ***qualities of a motor vehicle by way of a test drive.***

(s) ***Use a picture in connection with any advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually***

offered at the advertised price.

(t) Advertise a vehicle for sale that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as “new.”

Amended Ch. 1253, Stats. 1994. Effective January 1, 1995.

Amended Sec. 9.5, Ch. 766, Stats. 1995. Effective January 1, 1996. Supersedes Sec. 5, Ch. 211.

Amended Sec. 1, Ch. 517, Stats. 1998. Effective January 1, 1999.

Amended Sec. 3, Ch. 947, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material.

Additional Unlawful Acts: Dealers

11713.1. It is a violation of this code for the holder of any dealer's license issued under this Article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by ***its model, model-year, and*** either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, ***and*** model-year. () ¹ ***Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California.*** Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, ***and*** model-year () ¹ is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars (\$50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars (\$45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: “Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge.”

(3) For purposes of paragraph (1), “advertisement” means any advertisement in a newspaper, magazine, ***or*** direct mail publication () ² that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer's Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee

charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars (\$45) for the document preparation charge and not to exceed fifty dollars (\$50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term “free” includes merchandise or services offered for sale at a price less than the seller’s cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as “starting at,” “from,” “beginning as low as,” or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term “rebate” or similar words such as “cash back” in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, “cash price” has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance. ()³

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms “invoice,” “dealer’s invoice,” “wholesale price,” or similar terms that refer to a dealer’s cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer’s or distributor’s invoice price to a dealer.

(B) A dealer’s cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle’s invoice price or the dealer’s cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a “commercial purchaser” means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is “fully factory equipped.”

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer’s asking price which exceeds the manufacturer’s suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer’s name, that the supplemental sticker price is the dealer’s asking price, or words of similar import, and that it is not the manufacturer’s suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer’s suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer’s suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer’s suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and

describe it as “added mark-up.”

(r) Advertise any underselling claim, such as “we have the lowest prices” or “we will beat any dealer’s price,” unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, “incentive” means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission’s Buyer’s Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) As used in this section, the terms “make” and “model” have the same meaning as is provided in Section 565.3 of Title 49 of the Code of Federal Regulations.

Amended Ch. 535, Stats. 1993. Effective January 1, 1994.

Amended Ch. 1253, Stats. 1994. Effective January 1, 1995.

Amended Sec. 2, Ch. 585, Stats. 1995. Effective January 1, 1996. Supersedes Sec. 6, Ch. 211.

Amended Sec. 1, Ch. 186, Stats. 1996. Effective January 1, 1997.

Amended Sec. 2, Ch. 230, Stats. 1999. Effective January 1, 2000.

Amended Sec. 5, Ch. 566, Stats. 2000. Effective January 1, 2001.

Amended Sec. 4, Ch. 773, Stats. 2000. Effective January 1, 2001. Operative July 1 2001.

Amended Sec. 2, Ch. 441, Stats. 2001. Effective January 1, 2002.

Amended Sec. 4, Ch. 947, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. “, and type”

2. “, or handbill”

3. “unless the guarantee is provided by the manufacturer or distributor”

Additional Unlawful Acts

11713.2. It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce any dealer in this state:

(a) To order or accept delivery of any motor vehicle, part or accessory

thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer.

(b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(c) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(d) To participate in an advertising campaign or contest, any promotional campaign, promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

(e) To enter into any agreement with the manufacturer, manufacturer branch, distributor, or distributor branch, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and manufacturer, manufacturer branch, distributor, or distributor branch. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this article.

Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980. Supersedes Ch. 373.

Additional Unlawful Acts; Vehicle Manufacturers and Distributors

11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d) (1) Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(2) (A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all or substantially all of the assets of the franchised business or a controlling

interest in the franchised business to another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

- (i) The proposed transferee's name and address.
- (ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.
- (iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of any information needed to make the application complete.

(B) For the manufacturer or distributor, to fail on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. Any proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In any action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this Article to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each such order. In the event of manufacturer price

reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(l) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o) (1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor or any entity that controls or is controlled by, a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period. The board shall extend the time period until December 31, 2002, for any manufacturer that meets all of the following requirements:

(i) The manufacturer has no more than 25 franchisees in the state and those franchisees collectively operate dealership facilities in at least 15 counties of the state.

(ii) All of the dealership facilities operated by the manufacturer's franchisees in the state trade exclusively in the manufacturer's line-make.

(iii) No fewer than one-half of the manufacturer's franchisees in the state own and operate two or more dealership facilities in their assigned areas of responsibility.

(iv) The manufacturer holds a temporary ownership interest in no more than two dealerships in the state that are located in the relevant market area of any other franchisee of the same line-make not owned, in whole or part, by

the manufacturer.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) Every manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires or divests itself of an ownership interest.

(B) Every manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

(r) To fail to affix an identification number to any park trailer, as described in Section 18009.3 of the Health and Safety Code, that is manufactured on or after January 1, 1987, and which does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

(t) To exercise a right of first refusal or any other right requiring a franchisee or any owner thereof to sell, transfer, or assign to the franchisor, or to any nominee of the franchisor, all or any material part of the franchised business or of the assets thereof unless all of the following requirements are met:

(1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets thereof in the event of a proposed sale, transfer or assignment.

(2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of

subdivision (d).

(3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a “family member” means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. Nothing contained in this paragraph limits the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor's exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.

(6) The franchisor shall reimburse the proposed transferee for any expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of any real property on which the franchisee's operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee's receipt of a written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.

(u) (1) To unfairly discriminate in favor of any dealership owned or controlled, in whole or part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Unfair discrimination includes, but is not limited to, the following:

(A) The furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch or distributor of any of the following:

(i) Any vehicle that is not made available to each franchisee pursuant to a reasonable allocation formula that is applied uniformly, and any part or accessory that is not made available to all franchisees on an equal basis when there is no reasonable allocation formula that is applied uniformly.

(ii) Any vehicle, part, or accessory that is not made available to each franchisee on comparable delivery terms, including time of delivery after placement of order. Differences in delivery terms due to geographic distances or other factors beyond the control of the manufacturer, branch, or distributor shall not constitute unfair competition.

(iii) Any information obtained from a franchisee by the manufacturer, branch, or distributor concerning the business affairs or operations of any franchisee in which the manufacturer, branch, or distributor does not have an ownership interest. The information includes, but is not limited to, information contained in financial statements and operating reports, the

name, address, or other personal information or buying, leasing, or service behavior of any dealer customer, and any other information which if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

(B) Referring a prospective purchaser or lessee to a dealer in which a manufacturer, branch, or distributor has an ownership interest unless the prospective purchaser or lessee resides in the area of responsibility assigned to that dealer or the prospective purchaser or lessee requests to be referred to that dealer.

(2) Nothing in this subdivision shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

(v) As used in this section, “area of responsibility” is a geographic area specified in a franchise that is used by the franchisor for the purpose of evaluating the franchisee’s performance of its sales and service obligations.

Amended Ch. 272, Stats. 1993. Effective August 2, 1993.

Amended Ch. 1253, Stats. 1994. Effective January 1, 1995.

Amended Sec. 7, Ch. 662, Stats. 1998. Effective January 1, 1999.

Amended Sec. 2.5, Ch. 789, Stats. 2000. Effective January 1, 2001.

Refund of Excess Fees by Dealer

11713.4. If a purchaser of a vehicle pays to the dealer an amount for the licensing or transfer of title of the vehicle, which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the dealer to the state in order to avoid penalties that would have accrued because of late payment of such fees, the dealer shall return such excess amount to the purchaser, whether or not such purchaser requests the return of the excess amount.

Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980.

Unlawful Representation of Vehicle Year Model

11713.5. (a) It is unlawful and a violation of this code for the holder of any license issued under this Article to display for sale, offer for sale, or sell, a motor vehicle, representing the motor vehicle to be of a year model different from the year model designated at the time of manufacture or first assembly as a completed vehicle.

(b) It is unlawful and a violation of this code for the holder of any license issued under this Article to directly or indirectly authorize or advise another holder of a license issued under this Article to change the year model of a motor vehicle in the inventory of the other holder.

(c) It is unlawful and a violation of this code for the holder of any license issued under this Article to display for sale, offer for sale, or sell, a housecar which has been manufactured in two or more stages, unless the licensee informs the buyer that the housecar has been so manufactured and the licensee provides the buyer with a form, approved by the department, which sets forth the date of chassis and engine manufacture and the date and model year of the other stages of the vehicle. The licensee shall retain a copy of the form, which shall be signed by the purchaser prior to entering into any sales contract, indicating that the purchaser has received a copy of the form.

(d) This section does not apply to the displaying or offering for sale, or selling, of any new motor truck or truck tractor weighing over 10,000 pounds.

(e) This section does not apply to a vehicle which has been

remanufactured by a licensed remanufacturer. The year model of a remanufactured vehicle will be the year the vehicle was remanufactured.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Additional Unlawful Acts: Dealers: Tire Chains

11713.6. (a) It is unlawful and a violation of this code for the holder of any dealer's license issued under this Article to fail to disclose in writing to the buyer or lessee of a new motor vehicle, that the vehicle, as equipped, may not be operated on a highway signed for the requirement of tire chains if the owner's manual or other material provided by the manufacturer states that the vehicle, as equipped, may not be operated with tire chains.

(b) The disclosure required under subdivision (a) shall meet both of the following requirements:

(1) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(2) The disclosure shall include the following language in capital letters: "AS EQUIPPED, THIS VEHICLE MAY NOT BE OPERATED WITH TIRE CHAINS BUT MAY ACCOMMODATE SOME OTHER TYPE OF TIRE TRACTION DEVICE. SEE THE OWNER'S MANUAL FOR DETAILS."

(c) Prior to the sale or lease, the dealer shall present the disclosure statement for the buyer's or lessee's signature and then shall provide the buyer or lessee with a copy of the signed disclosure.

Amended Sec. 2, Ch. 452, Stats. 1995. Effective January 1, 1996.

Disclosure: Remanufactured Vehicle

11713.7. Disclosure to a buyer that a vehicle has been remanufactured is required. Disclosure shall be accomplished by all of the following:

(a) Oral notification to the buyer.

(b) The statement "THIS VEHICLE HAS BEEN REMANUFACTURED AND CONTAINS USED OR RECONDITIONED PARTS" shall appear in a type size at least the same as the bulk of the text on the purchase order or conditional sales contract signed by the buyer.

(c) The statement that the vehicle is remanufactured and contains used or reconditioned parts shall appear in any advertisement pertaining to remanufactured vehicles.

(d) Remanufactured vehicles displayed for retail purposes shall be clearly designated as remanufactured. The disclosure statement required in subdivision (b) shall appear on the vehicle or at the location where the vehicles are displayed.

Added Ch. 1286, Stats. 1983. Effective January 1, 1984.

Unlawful Acts: Remanufacturer

11713.8. It is unlawful and a violation of this code for a remanufacturer licensed under this code to fail to do any of the following:

(a) Report to the department an existing vehicle identification number when a used frame is utilized.

(b) Die stamp the vehicle identification number to the frame of the vehicle when a new vehicle identification number is assigned.

(c) Disclose that a vehicle is remanufactured and contains used or reconditioned parts as required by Section 11713.7.

(d) Remove the trade name of the original manufacturer from the vehicle, unless the remanufacturer and the original manufacturer are same.

(e) Maintain for three years bills of sale or invoices for used parts utilized in a remanufactured vehicle.

(f) Maintain for three years proof that the vehicle was reported

dismantled, as required by Section 5500 or 11520, when a used frame is utilized in a remanufactured vehicle.

(g) Disclose, on the vehicle identification number plate or label, that the vehicle is remanufactured and includes used parts.

(h) Disclose to the dealer on a document signed by the dealer that the vehicle is remanufactured and contains used parts.

Added Ch. 1286, Stats. 1983. Effective January 1, 1984.

Disclosure: Engine Manufacturer

11713.9. (a) It is unlawful and a violation of this code for the holder of a dealer's license to knowingly display for sale or offer for sale any new motor vehicle specified in subdivision (b) with an engine manufactured by a manufacturer that is not the same as the vehicle manufacturer, as defined in Section 9980, unless the vehicle is prominently labeled as specified in Section 9981.

(b) This section applies only to new passenger vehicles and to new motortrucks with an unladen weight under 6,000 pounds, except housecars.

Added Ch. 1264, Stats. 1984. Effective January 1, 1985.

Low-Speed Vehicle Dealer Disclosure

11713.10. It is unlawful and a violation of this code to sell a low-speed vehicle, as defined in Section 385.5, without disclosing to the buyer the vehicle's maximum speed and the potential risks of driving a low-speed vehicle.

Added Sec. 3, Ch. 140, Stats. 1999. Effective January 1, 2000.

Additional Unlawful Acts: Auctions: Dealer Advertising

11713.11. No holder of a dealer's license shall do any of the following when conducting an auction of vehicles to the public:

(a) Advertise that a vehicle will be auctioned to the public unless all of the following information is clearly and conspicuously disclosed in the advertisement:

(1) The date or the day of the week of the public auction, or if subdivision (b) applies to the auction, the date of the public auction.

(2) The location of the public auction.

(3) Whether a fee will be charged to attend the auction and the amount of that fee.

(4) The name and dealer number of the auctioning dealer.

(5) Whether a buyer's fee will be charged to a purchaser, in addition to the accepted auction bid price, and, if the fee is a set amount, the dollar amount of that fee. If the buyer's fee is not a set amount, the advertisement shall state the formula or percentage used to calculate the fee.

(b) If vehicles seized by a federal, state, or local public agency or authority are being advertised, advertise that a vehicle will be auctioned to the public unless, in addition to the information required by subdivision (a), the following information is clearly and conspicuously disclosed in the advertisement:

(1) A good faith estimate of the number of vehicles to be auctioned at that date.

(2) A good faith estimate of the number of vehicles seized by a federal, state, or local public agency or authority to be auctioned at that date.

(c) Fail, on the day of auction, to identify each vehicle seized by a federal, state, or local public agency or authority, either in a printed catalog or orally, before bidding begins on the vehicle.

(d) Include in the total price of an auctioned vehicle any costs to the purchaser at the completion of the sale, except the accepted auction bid price,

taxes, vehicle registration fees, any charge for emission testing, not to exceed fifty dollars (\$50), plus the actual fees charged to a consumer for a certificate pursuant to Section 44060 of the Health and Safety Code, any dealer document preparation charge not exceeding forty-five dollars (\$45), and any buyer's fee.

(e) Charge a buyer's fee, unless the dealer conducting the auction delivers to any person permitted to submit bids, and at a time prior to accepting any bids from that person, a disclosure statement required by this subdivision and signed by that person. The disclosure statement, if the buyer's fee is a set amount, shall disclose the amount of the fee, or if the buyer's fee is not a set amount, disclose the formula or percentage used to calculate the fee. The disclosure statement shall be on a separate 8/2 x 11 inch sheet of paper. Except for the information set forth in this subdivision, the disclosure statement shall not contain any other text, except as necessary to identify the dealer conducting the auction sale and to disclose the amount, percentage, or formula used to calculate the buyer's fee, and to provide for the date and the person's acknowledgment of receipt. The heading shall be printed in no smaller than 24-point bold type and the text of the statement shall be printed in no smaller than 12-point type and shall read substantially as follows:

BUYER'S FEE REQUIRED

A buyer's fee is an amount charged by the auctioning dealer for conducting the auction sale. If your bid price is accepted as the winning bid on any vehicle, you will be charged a buyer's fee in addition to the accepted bid price.

The buyer's fee that will be added to your accepted bid price is \$ _____.

OR

The buyer's fee that will be added to your accepted bid price will be calculated as follows (insert percentage or other formula for calculating the buyer's fee):

The buyer's fee is part of the purchase price and is subject to sales tax.

Date: _____ Signature of Bidder _____

(f) Fail to comply with or violate this chapter, Title 2.95 (commencing with Section 1812.600) of Part 4 of Division 3 of the Civil Code, Section 2328 of the Commercial Code, or Section 535 of the Penal Code, or any law administered by the State Board of Equalization, relating to the auctioneering business, including, but not limited to, sales and the transfer of title of goods.

(g) For purposes of this section, a "buyer's fee" is any amount that is in addition to the accepted auction bid price, taxes, vehicle registration fees, certificate of compliance or noncompliance fee, or any dealer document preparation charge, which is charged to a purchaser by an auctioning dealer.

Added Sec. 3, Ch. 585, Stats. 1995. Effective January 1, 1996.

Amended Sec. 2, Ch. 672, Stats. 1999. Effective January 1, 2000.

Lemon Law Buyback: Decal Location

11713.12. (a) The decal required by subdivision (c) of Section 1793.23 of the Civil Code to be affixed by a manufacturer to a motor vehicle, shall be

affixed to the left front doorframe of the vehicle, or, if the vehicle does not have a left front doorframe, it shall be affixed in a location designated by the department. The decal shall specify that title to the motor vehicle has been inscribed with the notation "Lemon Law Buyback" and shall be affixed to the vehicle in a manner prescribed by the department.

(b) No person shall knowingly remove or alter any decal affixed to a vehicle pursuant to subdivision (a), whether or not licensed under this code.

Added Sec. 6, Ch. 503, Stats. 1995. Effective January 1, 1996.

Dealer Sale: Public Auction: Purchaser's Rights and Remedies

11713.14. (a) Notwithstanding any other provision of law, a person who purchases a vehicle that is sold through a dealer at an auction of vehicles open to the general public shall have the same rights and remedies against the dealer who conducts the auction sale as if that dealer were the owner and seller of the auctioned vehicle. The purchaser's rights and remedies are in addition to any right or remedy he or she may have against an owner of a vehicle sold at a public auto auction.

(b) If any claim or action is filed against a dealer pursuant to subdivision (a) and the vehicle that is the subject of the claim or action was owned by a person other than the dealer at the time of sale by auction, the owner of the vehicle that consigned it to the dealer shall indemnify the dealer for any liability resulting from misrepresentations or other misconduct by the consignor.

(c) A purchaser's rights and remedies under this section may not be waived or modified by an agreement or by a recharacterization of the sales transaction.

Added Sec. 3, Ch. 672, Stats. 1999. Effective January 1, 2000.

***Recreational Vehicle Show:
Temporary Branch License Requirements***

11713.15. (a) (1) Prior to being issued a temporary branch license for selling new recreational vehicles, as defined in Section 18010 of the Health and Safety Code, at a show, a dealer shall submit to the department a manufacturer's written authorization for the sale specifying the dates of the show, the location of the show, and the makes of those new recreational vehicles being offered for sale.

(2) If nine or fewer dealers are participating in the show, a temporary branch license may only be issued to a dealer under this subdivision if the location of the show is 50 miles or less from that dealer's established place of business or permanent branch location.

Each dealer described in this paragraph shall certify in his or her application for a temporary branch license that the show location is 50 miles or less from his or her established place of business or permanent branch location.

(3) A temporary branch license may be issued to a dealer for purposes of participating in a show if all of the following conditions exist:

(A) The location of the show is 50 miles or more from the dealer's place of business or that dealer's branch locations, or both.

(B) Ten or more dealers apply for temporary branch licenses for purposes of participating in that show.

(C) Not less than 10 days prior to the conduct of the show, the department receives at least 10 applications for temporary branch licenses together at one of the department's field offices.

(b) (1) Any advertising and promotional materials designed to attract the public to attend a show of recreational vehicles where there are nine or fewer dealers participating shall include the business name of each participating

dealer and that dealer's established place of business in a type size that is equivalent to the second largest type used in the advertisement or promotional materials. This information shall be placed at the top of any advertisement or promotional materials.

(2) If the recreational vehicles being offered for sale are used, the word "used" shall immediately precede the identification of the make of the vehicle or be immediately adjacent to the depiction of any used vehicles.

(3) In addition, the promoters of the show shall cause a sign to be conspicuously displayed at the major, public entrance leading directly to the show, printed in 50point type, containing the information required in paragraph (1).

(c) A recreational vehicle dealer participating in a show for which a temporary branch license is required shall provide each buyer, prior to the sale of any vehicle at the show, a written statement disclosing the identity and the established business location of the dealer that has agreed to render service or warranty work with respect to the vehicle being purchased by the buyer, and if there is no agreement with any dealer to render the service or warranty, to state that fact.

(d) Paragraphs (2) and (3) of subdivision (a) and subdivision (b) do not apply to a dealer participating in an annual show sponsored by a national trade association of recreational vehicle manufacturers, the show is located in a county with a population of 6,000,000 or more persons, and at least 25 manufacturers are participating in the show, and, if the dealer is otherwise eligible to participate in the show, the department shall issue a temporary branch license if all the following occur:

(1) A national trade association of recreational vehicle manufacturers submits a letter to the department that certifies its status as a national trade association of recreational vehicle manufacturers and specifies the dates and location of the show.

(2) Upon receipt of the letter from a national trade association described in paragraph (1) notifying the department of the dates and location of the show, the department provides written acknowledgement to the national trade association submitting the letter.

(3) Each dealer participating in the show attaches a copy of the department letter described in paragraph (2) to the application for a temporary branch license submitted to the department.

Added Sec. 1, Ch. 923, Stats. 1995. Effective January 1, 1996.

Amended Sec. 1, Ch. 339, Stats. 1997. Effective August 21, 1997.

Vehicle Sales: Unlawful Advertising

11713.16. It is a violation of this code for the holder of any dealer's license issued under this Article to do any of the following:

(a) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as "used," "previously owned," or a similar term that indicates that the vehicle is used, as defined in this code.

(b) Use the terms "on approved credit" or "on credit approval" in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

(c) Advertise an amount described by terms such as "unpaid balance" or "balance can be financed" unless the total sale price is clearly and conspicuously disclosed and in close proximity to the advertised balance.

(d) Advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated

payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

(e) Advertise as the total sales price of a vehicle an amount that includes a deduction for a rebate. However, a dealer may advertise a separate amount that includes a deduction for a rebate provided that the advertisement clearly and conspicuously discloses, in close proximity to the amount advertised, the price of the vehicle before the rebate deduction and the amount of the rebate, each so identified.

(f) Advertise claims such as “everyone financed,” “no credit rejected,” or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

(g) Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. Statements such as “\$_____ delivers,” “\$_____ puts you in a new car” are examples of advertised downpayments.

(h) Advertise the price of a new vehicle or class of new vehicles unless the vehicle or vehicles have all of the equipment listed as standard by the manufacturer or distributor or the dealer has replaced the standard equipment with equipment of higher value.

(i) Fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

Added Sec. 5, Ch. 947, Stats. 2002. Effective January 1, 2003.

Issuance of License, Special Plates, and Forms: Prohibited Sales

11714. (a) The department, upon granting a license, shall issue to the applicant a license containing the applicant's name and address and the general distinguishing number assigned to the applicant.

(b) A dealer shall not sell any vehicle at retail at a location that is not posted pursuant to Section 11709.

(c) A dealer who is authorized by the department to sell motor vehicles only at wholesale shall not sell any vehicle at retail and shall report every sale to the department on the wholesale report of sale form prescribed by the department.

(d) When the department has issued a license pursuant to subdivision (a), the licensee may apply for and the department shall issue special plates which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate so issued shall also contain a number or symbol identifying the plate from every other plate bearing a like general distinguishing number.

(e) The department shall also furnish books and forms as it may determine necessary. Such books and forms are and shall remain the property of the department and may be taken up at any time for inspection.

Amended Ch. 444, Stats. 1987. Effective January 1, 1988.

Operation With Special Plates: Exceptions

11715. (a) A manufacturer, remanufacturer, distributor, or dealer owning or lawfully possessing any vehicle of a type otherwise required to be registered under this code may operate or move the vehicle upon the highways without registering the vehicle upon condition that the vehicle displays special plates issued to the owner as provided in this chapter, in addition to other license plates or permits already assigned and attached to

the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. A vehicle for sale or lease by a dealer may also be operated or moved upon the highways without registration for a period not to exceed seven days by a prospective buyer or lessee who is test-driving the vehicle for possible purchase or lease, if the vehicle is in compliance with this condition. The vehicle may also be moved or operated for the purpose of towing or transporting by any lawful method other vehicles.

(b) A transporter may operate or move any owned or lawfully possessed vehicle of like type by any lawful method upon the highways solely for the purpose of delivery, upon condition that there be displayed upon each vehicle in contact with the highway special license plates issued to the transporter as provided in this chapter, in addition to any license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. The vehicles may be used for the purpose of towing or transporting by any lawful method other vehicles when the towing or transporting vehicle is being delivered for sale or to the owner thereof.

(c) This section does not apply to any manufacturer, remanufacturer, transporter, distributor, or dealer operating or moving a vehicle as provided in Section 11716.

(d) This section does not apply to work or service vehicles owned by a manufacturer, remanufacturer, transporter, distributor, or dealer. This section does not apply to vehicles owned and leased by dealers, except those vehicles rented or leased to vehicle salespersons in the course of their employment for purposes of display or demonstration, nor to any unregistered vehicles used to transport more than one load of other vehicles for the purpose of sale.

(e) This section does not apply to vehicles currently registered in this state that are owned and operated by a licensed dealer when the notice of transfer has been forwarded to the department by the former owner of record pursuant to Section 5900 and when a copy of the notice is displayed as follows:

(1) For a motorcycle or motor-driven cycle, the notice is displayed in a conspicuous manner upon the vehicle.

(2) For a vehicle other than a motorcycle or motor-driven cycle, the notice is displayed in the lower right-hand corner of the windshield of the vehicle, as specified in paragraph (3) of subdivision (b) of Section 26708.

(f) Every owner, upon receipt of a registration card issued for special plates, shall maintain the same or a facsimile copy thereof with the vehicle bearing the special plates.

Amended Sec. 6.5, Ch. 739, Stats. 2001. Effective January 1, 2002.

Operation Without Registration: Permit

11716. A manufacturer, remanufacturer, transporter, distributor, or dealer, in the course of business, may operate or move any vehicle of a type otherwise required to be registered under this code without registering the vehicle, and without license or special plates attached thereto, from a vessel, railroad depot, or warehouse over the highways to a warehouse or salesroom upon first having obtained a written permit from the department authorizing that operation.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Expiration and Renewal of Special Plates and License

11717. (a) Every occupational license and special plate issued under this Articleshall be valid for a period of one year from midnight of the last day of the month of issuance. Except as provided in subdivision (c), renewal of the occupational license and special plates for the ensuing year may be

obtained by the person to whom the occupational license and special plates were issued upon application to the department and payment of the fee provided in this code.

(b) Every application for the renewal of an occupational license and special plates which expire pursuant to this section shall be made by the person to whom issued not more than 90 days prior to the expiration date, and shall be made by presenting the completed application form provided by the department and by payment of the full annual renewal fee for the occupational license and special plates.

(c) If the application for renewal of the occupational license and special plates is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each occupational license held. A penalty as specified in Sections 9553 and 9554 shall also be added to each special plate renewed during the 30-day period following expiration of the special plates.

(d) In no event may the licensee renew the occupational license or special plates after the expiration of the 30-day period authorized in subdivision (c).

Amended Ch. 499, Stats. 1984. Effective January 1, 1985.

Issuance of Probationary License

11718. Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Temporary Permit

11719. Pending the satisfaction of the department that the applicant has met the requirements under this article, it may issue a temporary permit to any person applying for a manufacturer's, manufacturer's branch, remanufacturer's, remanufacturer's branch, distributor's, distributor's branch, transporter's, or dealer's license and special plates. The temporary permit shall permit the operation by the manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to the license and special plates. The department may cancel the temporary permit when it has determined, or has reasonable cause to believe, that the application is incorrect or incomplete or the temporary permit was issued in error. The temporary permit is invalid when canceled or when the applicant's license has been issued or refused.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Certificate of Convenience

11720. The department may issue a certificate of convenience to the executor, executrix, administrator or administratrix of the estate of a deceased holder of validly outstanding special plates and license issued under this article, or if no executor, executrix, administrator or administratrix has been appointed, and until a certified copy of an order making such appointment is filed with the department, to the surviving

spouse or other heir otherwise entitled to conduct the business of the deceased, permitting such person to exercise the privileges granted by such special plates and license for a period of one year from and after the date of death and necessary one-year renewals thereafter, pending, but not later than, disposal of the business and qualification of the vendee of the business or such surviving spouse, heir or other persons for such special plates and license under the provisions of this article. The department may restrict or condition the license and attach to the exercise of the privileges thereunder such terms and conditions as in its judgment the protection of the public requires.

Amended Ch. 1171, Stats. 1976. Effective January 1, 1977.

Automatic Cancellation

11721. The special plates and licenses provided for in this Article shall be automatically canceled upon the happening of any of the following:

(a) The abandonment of the established place of business of the dealer or the change thereof without notice to the department as provided in Section 11712.

(b) The failure of the licensee to maintain an adequate bond or to procure and file another bond as provided in Section 11710 prior to the effective date of the termination by the surety of any existing bond.

(c) The voluntary or involuntary surrender for any cause by the licensee of the special plates and license, except that the surrender of the special plates and license, the cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11705, does not affect the department's decision to suspend or revoke the license. The department's determination to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee or to a business representative of that prior licensee.

(d) Notification to the department that the person designated as licensee has changed, except that the special plates issued to the original licensee may be transferred and the newly designated licensee as transferee shall succeed to the privileges evidenced by the plates until their expiration.

(e) The suspension or revocation of the corporate status of the licensee.

(f) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Financing Agency

11722. ()¹ ***Claims, against the surety upon a dealer's bond, of a financing agency that has loaned money to a licensee or assignee thereof shall be allowed only to the extent that the claims of any other person or entity with respect to the bond under Section 11711 shall be satisfied first and entitled to preference over the claims of the financing agency with respect to the bond;*** provided, however, that as to any conditional sales contract as defined in Section 2981 of the Civil Code, acquired by way of purchase or pledge, a financing agency shall be entitled to protection under ()² ***the bond with the same preference set forth under Section 11711 if the financing agency is defrauded by a licensee.***

Amended Sec. 2, Ch. 303, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. "The bond provided for in Section 11710 shall not be conditioned to protect the monetary interest of a financing agency which has loaned money to a licensee or assignee thereof;"

2. "said bond if such"

License Fees: Exception

11723. The board may require that fees shall be paid to the department for the issuance or renewal of a license to do business as a new motor vehicle dealer, dealer branch, manufacturer, manufacturer branch, distributor, distributor branch, or representative. The fees shall be to reimburse the department for costs incurred in licensing those dealers, manufacturers, distributors, branches, and representatives and for related administrative costs incurred on behalf of the board. The board may also require that an additional fee be paid to the department when the licensee has failed to pay the fee authorized by Section 3016 prior to the expiration of its occupational license and special plates and the licensee utilizes the 30-day late renewal period authorized by subdivision (c) of Section 11717.

This section shall not apply to dealers, manufacturers, distributors, or representatives of vehicles not subject to registration under this code, except dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives of off-highway motorcycles, as defined in Section 436.

Amended Ch. 1201, Stats. 1985. Effective January 1, 1986.

Removal of Motor Vehicle to Foreign Jurisdiction for Registration or Sale

11725. (a) No person shall transport or drive any motor vehicle from this state outside of the United States with the intent to register or sell such vehicle in a foreign jurisdiction, without first removing the license plates and delivering them to the department. Such person may obtain a permit from the department authorizing the operation of the unlicensed motor vehicle on the public highways of this state in order to reach such foreign jurisdiction. Failure to deliver the license plates as required by this section shall be a misdemeanor.

(b) No holder of any license, or any temporary permit for such license issued under this division, shall deliver any vehicle following sale without first removing all license plates from such vehicle when it is known by the licensee that the vehicle is to be exported to a foreign jurisdiction outside of the United States.

Amended Ch. 934, Stats. 1976. Effective January 1, 1977.

Recovery of Damages; Injunctive Relief

11726. Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of Article 1 (commencing with Section 11700) or 3 (commencing with Section 11900) of Chapter 4 of Division 5 or Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 or with any regulation adopted by the department or any rule adopted or decision rendered by the board under authority vested in them may recover damages and reasonable attorney fees therefor in any court of competent jurisdiction. Any such licensee may also have appropriate injunctive relief in any such court.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Revocation or Suspension of License

11727. The revocation or suspension of a license of a manufacturer, manufacturer branch, distributor, distributor branch, or representative may be limited to one or more municipalities or counties or any other defined area, or may be revoked or suspended in a defined area only as to certain aspects of its business, or as to a specified dealer or dealers.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Compromise Settlement Agreement: Monetary Penalties

11728. As part of a compromise settlement agreement entered into pursuant to Section 11707 or 11808.5, the department may assess a monetary penalty of not more than two thousand five hundred dollars (\$2,500) per violation and impose a license suspension of not more than 30 days for any dealer who violates subdivision (r) of Section 11713. The extent of the penalties shall be based on the nature of the violation and effect of the violation on the purposes of this article. Except for the penalty limits provided for in Sections 11707 and 11808.5, all the provisions governing compromise settlement agreements for dealers, salespersons, and wholesalers apply to this section, and Section 11415.60 of the Government Code does not apply.

Amended Sec. 90, Ch. 938, Stats. 1995. Effective January 1, 1996. Operative July 1, 1997.

Consignment Agreement Required

11729. (a) Except as provided in subdivision (b), any dealer engaging in a consignment with an owner not licensed as a dealer, manufacturer, manufacturer branch, distributor, or a distributor branch licensed under this code, and the consignment is not otherwise prohibited by this code, shall execute a consignment agreement as prescribed by Section 11730. The failure of a dealer, when required under this section, to complete and comply with the terms of the prescribed consignment agreement for any vehicle which the dealer agrees to accept on consignment, or to pay the agreed amount to the consignor or his or her designee within 20 days after the date of sale of the vehicle, is cause for suspending or revoking the license of the dealer under paragraph (10) of subdivision (a) of Section 11705.

(b) (1) A dealer conducting retail auction sales on behalf of a fleet owner shall execute a consignment agreement applicable to all vehicles consigned for sale during the term of the agreement which contains, at a minimum, substantially all of the terms, phrases, conditions, and disclosures required by Section 11730, except the following are not required:

(A) The description of a specific vehicle by year, make, identification number, license, state, or mileage.

(B) The information contained in paragraph (4) of subdivision (b) of Section 11730.

(2) If mutually agreeable, in lieu of the requirements of paragraph (7) of subdivision (b) of Section 11730, the consignor may provide the documents necessary to transfer the ownership of the vehicle to the consignee prior to the auction being held.

(3) For purposes of this subdivision, "fleet owner" is either of the following:

(A) A person who is the registered or legal owner of 25 or more vehicles registered in this state and is the owner, as recorded in the department's records, of the vehicles consigned for sale to the dealer.

(B) A bankruptcy trustee who owns or has legal control of the vehicles consigned for sale to the dealer, government agency, or financial institution.

Amended Sec. 4, Ch. 672, Stats. 1999. Effective January 1, 2000.

Consignment Agreement: Requirements

11730. The consignment agreement required by Section 11729 shall contain all the following terms, phrases, conditions, and disclosures:

(a) The date the agreement is executed.

(b) All of the following statements:

(1) "I (We), the undersigned consigner(s), hereby consign and deliver possession of my (our) vehicle, which is a (Year) ____ (Make) ____ (ID#) ____ (License) ____ (State) ____ (Mileage) ____, to (Consignee) ____ (Dealer #)

____ for the sole purpose of selling the vehicle and paying, to the consignor or his or her designee from the proceeds of the sale of the vehicle, the amount agreed upon under terms of this agreement. This agreement is effective and valid only for a period of ____ days from this date.”

(2) “At the termination of this agreement, the consignee shall return the vehicle to the consignor, or, at the option of both the consignor and consignee, enter into a new agreement.”

(3) “If the vehicle is sold by the consignee during the term of this agreement, the money due the consignor shall be disbursed within 20 days after the date of sale in accordance with the terms of this agreement. As used in this agreement, a “sale” occurs when the consignee either (A) receives the purchase price or its equivalent or executes a conditional sales contract for the vehicle, or (B) when the purchaser takes delivery of the vehicle, whichever occurs first.”

(4) “The following information shall be completed prior to the signing of this agreement:

Current market value: \$ ____ Source: ____.

Outstanding liens: \$ ____ Lienholder: ____.

(Any difference between the outstanding amount shown and the actual payoff to the lienholder will be credited to the consignor.)

Repairs to be made: \$ ____ Work Order # ____.

Moneys to the consignor: ____ percent of sale price, flat fee of \$ ____ or the following specific formula: ____.”

(5) “Within 20 days after sale, the consignee shall make an accounting to the consignor of all of the following: date of sale, repairs authorized by consignor (supported by work records), exact amount of any liens payable to lienholders, evidence of payment of any liens, and the total sales price.”

(6) “The consigned vehicle is delivered to the consignee in trust for the exact terms set forth in this agreement. The consignee agrees to receive this vehicle in trust and not to permit its use for any other purpose other than contained in this agreement without the express written consent of the consignor.”

(7) “Upon payment of the moneys due the consignor, the consignor agrees to furnish the consignee those documents necessary to transfer the ownership of the vehicle to the purchaser.

Signatures:

Consignor Date

Address

Consignee Date

Address”

(8) “NOTICE TO CONSIGNOR: Failure of the consignee to comply with the terms of this agreement may be a violation of statute which could result in criminal or administrative sanctions, or both. If you feel the consignee has not complied with the terms of this agreement, please contact an investigator of the Department of Motor Vehicles.”

Amended Sec. 12, Ch. 1035, Stats. 2000. Effective January 1, 2001.

Autobroker’s Endorsement to Dealer’s License

11735. (a) No dealer shall engage in brokering a retail sales transaction without first paying the fee required by subdivision (d) of Section 9262 and obtaining from the department an autobroker’s endorsement to the dealer’s

license. An autobroker's endorsement shall be automatically cancelled upon the cancellation, suspension, revocation, surrender, or expiration of a dealer's license.

(b) Upon the issuance of an autobroker's endorsement to a dealer's license, the department shall furnish the dealer with an autobroker's log. The autobroker's log shall remain the property of the department and may be taken up at any time for inspection.

(c) The autobroker's log shall contain spaces sufficient for the dealer to record the following information with respect to each retail sale brokered by that dealer:

- (1) Vehicle identification number of brokered vehicle.
- (2) Date of brokering agreement.
- (3) Selling dealer's name, address, and dealer number.
- (4) Name of consumer.
- (5) Brokering dealer's name and dealer number.

(d) Nothing in this code prohibits a dealer who has been issued an autobroker's endorsement to his or her dealer's license from delivering, with the selling dealer's written approval, motor vehicles that have been sold pursuant to a duly executed motor vehicle purchase agreement or obtaining a consumer's signature on a selling dealer's motor vehicle purchase agreement that has already been executed by the selling dealer.

(e) When brokering a retail sale as an agent of the consumer, selling dealer, or both, the brokering dealer owes a fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with its principal or principals.

(f) For purposes of this section and Sections 11736, 11737, and 11738, "consumer" means any person who retains a dealer to perform brokering services in connection with a retail sale.

Added Ch. 1253, Stats. 1994. Effective January 1, 1995.

Amended Sec. 7, Ch. 211, Stats. 1995. Effective January 1, 1996.

Brokering: Unlawful Acts

11736. It is unlawful for any dealer licensed under this Article to do any of the following when brokering a retail sale:

(a) Fail to execute a written brokering agreement, as described in Section 11738, and provide a completed copy to both of the following:

(1) Any consumer entering into the brokering agreement. The completed copy shall be provided prior to the consumer's signing of an agreement for the purchase of the vehicle described in the brokering agreement or, prior to accepting one hundred dollars (\$100) or more from that consumer, whichever occurs first.

(2) The selling dealer. The completed copy shall be provided prior to the selling dealer's entering into a purchase agreement with the consumer.

(b) Accept a purchase deposit from any consumer that exceeds 2.5 percent of the selling price of the vehicle described in the brokering agreement.

(c) Fail to refund any purchase money, including purchase deposits, upon demand by a consumer at any time prior to the consumer's signing of a vehicle purchase agreement with a selling dealer and taking delivery of the vehicle described in the brokering agreement.

(d) Fail to cancel a brokering agreement and refund, upon demand, any money paid by a consumer, including any brokerage fee, under any of the following circumstances:

(1) When the final price of the brokered vehicle exceeds the purchase price listed in the brokering agreement.

(2) When the vehicle delivered is not as described in the brokering agreement.

(3) When the brokering agreement expires prior to the customer being

presented with a purchase agreement from a selling dealer arranged through the brokering dealer that contains a purchase price at or below the price listed in the brokering agreement.

(e) Act as a seller and provide brokering services, both in the same transaction.

(f) Fail to disclose to the consumer and selling dealer, as soon as practicable, whether the autobroker receives or does not receive a fee or other compensation, regardless of the form or time of payment, from the selling dealer and the dollar amount of any fee that the consumer is obligated to pay to the autobroker. This arrangement shall be confirmed in a brokering agreement.

(g) Fail to record in the dealer's autobroker log, for each brokered sale, all of the information specified in subdivision (c) of Section 11735.

(h) Fail to maintain for a minimum of three years a copy of the executed brokering agreement and other notices and documents related to each brokered transaction.

(i) Fail to advise the consumer, prior to accepting any money, that a full refund will be given if the motor vehicle ordered through the autobroker is not obtained for the consumer or if the service orally contracted for is not provided.

Added Ch.1253, Stats. 1994. Effective January 1, 1995.

Amended Sec. 8, Ch. 211, Stats. 1995. Effective January 1, 1996.

Brokering: Purchase Deposits: Trust Account

11737. (a) A dealer who brokers a motor vehicle sale shall deposit directly into a trust account any purchase money, including purchase deposits, it receives from a consumer or a consumer's lender. This subdivision does not require a separate trust account for each brokered transaction.

(b) The brokering dealer shall not in any manner encumber the corpus of the trust account except as follows:

(1) In partial or full payment to a selling dealer for a vehicle purchased by the brokering dealer's consumer.

(2) To make refunds.

(c) Subdivision (b) shall not prevent payment of the interest earned on the trust account to the brokering dealer.

(d) The brokering dealer shall serve as trustee of the trust account required by this section. If the brokering dealer is a partnership or a corporation, the managing partner of the partnership or the chief executive officer of the corporation shall be the trustee. The trustee may designate in writing that an officer or employee may manage the trust account if that officer or employee is under the trustee's supervision and control, and the original of that writing is on file with the department.

(e) All trust accounts required by this section shall be maintained at a branch of a bank, savings and loan association, or credit union regulated by the state or the government of the United States.

(f) The brokering dealer has a fiduciary responsibility with respect to all purchase money received from a consumer or consumers lender relative to a brokered sale transaction.

(g) The following are deemed to be held in trust for consumers who have paid purchase money to a brokering dealer:

(1) All sums received by the brokering dealer whether or not required to be deposited in an actual trust account and regardless of whether any of these sums were required to be deposited or actually were deposited in a trust account.

(2) All property with which any of the sums described in paragraph (1)

has been commingled if any of these sums cannot be identified because of the commingling.

(h) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every consumer of a brokering dealer has a claim on the trust for purchase money payments made to the brokering dealer. Unless a consumer can identify his or her funds in the trust within the time established by the court, each consumer shall receive a proportional share based on the amount paid.

Added Ch. 1253, Stats. 1994. Effective January 1, 1995.

Brokering Agreement: Form and Contents

11738. The brokering agreement required by Section 11736 shall be printed in no smaller than 10-point type and shall contain not less than the following terms, conditions, requirements, and disclosures:

(a) The name, address, license number, and telephone number of the autobroker.

(b) A complete description, including line-make, model, year model, and color, of the vehicle and the desired options.

(c) The following statement:

"The following information shall be completed prior to the signing of this brokering agreement:

Dollar Purchase Price of Vehicle: _____.

Date this agreement will expire if a purchase agreement from a selling dealer is not presented for your signature: _____.

Fee that you will be obligated to pay us, if any: _____."

(d) One of the following notices, as appropriate, printed in at least 10-point bold type and placed immediately below the statement required by subdivision (c):

(1) "We do not receive a fee from the selling dealer."

(2) "We receive a fee from the selling dealer."

(e) The following notice on the face of the brokering agreement with a heading in at least 14-point bold type and the text in at least 10-point bold type, circumscribed by a line, that reads as follows:

NOTICE

This is an agreement to provide services; it is not an agreement for the purchase of a vehicle. California law gives you the following rights and protection:

Once you have signed this agreement, you have the right to cancel it and receive a full refund of any money paid, including any brokerage fee you may have paid, under any of the following circumstances:

(1) The final price of the vehicle exceeds the purchase price listed above.

(2) The vehicle is not as described above upon delivery.

(3) This agreement expires prior to your being presented with a selling dealer's purchase agreement.

If you have paid a purchase deposit, you have the right to receive a refund of that deposit at any time prior to your signing a vehicle purchase agreement with a selling dealer. Purchase deposits are limited by law to no more than 2.5 percent of the purchase price of the vehicle and must be deposited by an autobroker or auto buying service in a federally insured trust account. If you are unable to resolve a dispute with your autobroker or auto buying service, please contact an investigator of the Department of Motor Vehicles.

(f) The date the agreement is executed.

(g) The signature of the autobroker and consumer.

Added Ch. 1253, Stats. 1994. Effective January 1, 1995.

Amended Sec. 13, Ch. 1035, Stats. 2000. Effective January 1, 2001.

***Brokered Retail New Motor Vehicle Sale:
Dealer and Manufacturer Responsibilities***

11739. For purposes of title registration, warranties, rebates, and incentives, in a brokered retail new motor vehicle sale, the selling, franchised new car dealer, and not the autobroker, is responsible to apply for title in the name of the purchaser, to secure vehicle registration and the license plates for the purchaser, to secure the manufacturer's warranty in the name of the purchaser, and to make all applications for any manufacturer's rebates and incentives due the purchaser. If there is a manufacturer's recall, the consumer shall be notified directly by the manufacturer.

Added Ch. 1253, Stats. 1994. Effective January 1, 1995.

Remedies and Penalties: Cumulative

11740. ***The remedies and penalties provided in this code for a violation of this Article are cumulative to the remedies and penalties provided by other laws.***

Added Sec. 3, Ch. 407, Stats. 2002. Effective January 1, 2003.

Article 2. Vehicle Salespersons

(Amended Ch. 13, Stats. 1991. Effective February 13, 1991.)

Unlawful to Act as Vehicle Salesperson Without License

11800. It shall be unlawful for any person to act as a vehicle salesperson without having first procured a license or temporary permit issued by the department or when that license or temporary permit issued by the department has been canceled, suspended, revoked, or invalidated or has expired.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Contents of Application; Format of License

11802. (a) The department shall prescribe and provide forms to be used for application for licenses to be issued under this Article and require of applicants, as a condition of the issuance of a license, that information concerning the applicant's character, honesty, integrity, and reputation as it considers necessary. Every application for a vehicle salesperson's license shall contain, in addition to that information which the department requires, a statement of all of the following facts:

(1) The name and address of the applicant.

(2) Whether the applicant has ever had a court judgment rendered for which he or she has been liable as a result of his or her activities in conjunction with an occupational license issued under this division, and whether that judgment remains unpaid or unsatisfied.

(3) Whether the applicant ever had a license, issued under this division, revoked, suspended, or subjected to other disciplinary action and whether the applicant was ever a partner in a partnership or an officer, director, or stockholder in a corporation licensed under this division, the license of which was revoked, suspended, or subjected to other disciplinary action.

(b) The department shall issue a license bearing a fullface photograph of the licensee and the following information:

(1) Name and address.

(2) Physical description.

(3) The licensee's usual signature.

(4) Distinguishing vehicle salesperson's license number.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Temporary Permit

11803. Pending the satisfaction of the department that the applicant has met the requirements of this chapter, it may issue a temporary permit to any person applying for a vehicle salesperson's license. The temporary permit shall permit the operation by the salesperson for a period of not more than 120 days while the department is completing its investigation of the applicant for the license. If the department determines to its satisfaction that the temporary permit was issued upon a fraudulent application or determines or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error, the department may cancel the temporary permit, effective immediately. () **The temporary permit shall become invalid when *canceled* or *when the applicant's license has been issued or refused*.**

Amended Sec. 10, Ch. 758, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "If, however, the department determines that the information in the application is correct and complete, the temporary permit shall become invalid when the department issues, or refuses to issue, a license, unless within five days of receipt of a notice of refusal to issue and statement of issues, the applicant demands a hearing pursuant to subdivision (c) of Section 11810. The filing of a demand for a hearing shall stay the effective date of the invalidation of the temporary permit, pending a hearing and a determination of the issues. The notice of refusal to issue shall become effective and final five days after its receipt by the applicant"

Authority to Issue or Refuse to Issue License

11804. The department may issue, or for reasonable cause shown, refuse to issue, a license to any applicant applying for a vehicle salesperson's license.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Refusal to Issue, Suspension or Revocation of License: Grounds

11806. The department, after notice and hearing, may refuse to issue, or may suspend or revoke, a vehicle salesperson's license when it makes any of the following findings and determinations:

(a) The applicant or licensee has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under this division.

(b) The applicant or licensee has failed to pay funds or property received in the course of employment to a dealer entitled thereto.

(c) The applicant or licensee has failed to surrender possession of, or failed to return, any vehicle to a dealer lawfully entitled thereto upon termination of employment.

(d) A cause for refusal, suspension, or revocation exists under any provision of Sections 11302 to 11909, inclusive.

(e) The applicant was previously the holder of an occupational license issued by another state authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The applicant or licensee has acted as a dealer by purchasing or selling vehicles while employed by a licensed dealer without reporting that fact to the dealer or without utilizing the report of sale documents issued to the dealer.

(g) The applicant or licensee has acted as a vehicle salesperson or engaged in that activity for, or on behalf of, more than one licensed dealer whose business does not have identical ownership and structure. Nothing in this section restricts the number of dealerships of which a person may be an

owner, officer, or director, or precludes a vehicle salesperson from working at more than one location of one licensed dealer if the business of that dealer has identical ownership and structure.

(h) The applicant or licensee has acted as a vehicle salesperson without having first complied with Section 11812.

(i) The applicant or licensee was a managerial employee of a dealer during the time a person under the direction or control of the managerial employee committed wrongful acts which resulted in the suspension or revocation of the dealer's license.

(j) The applicant or licensee has acted as a dealer by purchasing or selling any vehicle and using the license, report of sale books, purchase drafts, financial institution accounts, or other supplies of a dealer to facilitate that purchase or sale, when the applicant or licensee is not acting on behalf of that dealer.

Amended Sec. 51, Ch. 877, Stats. 1998. Effective January 1, 1999.

Suspension or Revocation: Hearing

11808. Every hearing provided for in this Article shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Compromise Settlement Agreement

11808.5. (a) After the filing of an accusation under this article, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. Except as provided in Section 11728, the monetary penalty shall not exceed five hundred dollars (\$500) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this article.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law, notwithstanding the agreement, including, but not limited to, refile the accusation or imposing license sanctions.

Amended Ch. 90, Stats. 1990. Effective May 9, 1990.

Temporary Suspension, Probation, and Reapplication

11810. (a) The department may, pending a hearing, temporarily suspend the license issued to a vehicle salesperson for a period of not more than 30 days if the director finds that action to be required in the public interest. In that case, a hearing shall be held and a decision thereon issued within 30 days after notice of the temporary suspension.

(b) Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall be those which may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained in the application.

(c) If the department issues or renews a vehicle salesperson's license requiring conditions of probation or if the department refuses to issue a vehicle salesperson's license, the applicant may demand in writing a hearing before the director or the director's representative within 60 days after notice of refusal to issue or issuance of the probationary license.

(d) A person whose license has been revoked or whose application for a license has been denied may reapply for a license after not less than one year has elapsed from the effective date of the decision revoking the license or denying the application, except that if the decision was based upon subdivision (a) of Section 11806, an earlier reapplication may be made accompanied by evidence satisfactory to the department that those grounds for revocation or denial of the license no longer exist.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Display of License

11812. (a) Every vehicle salesperson licensed under this Article shall, at the time of employment, deliver to his or her employing dealer his or her salesperson's license to be posted in a place conspicuous to the public on the premises where he or she is actually engaged in the selling of vehicles for the employing dealer.

(b) The license shall be displayed continuously during the employment. If a vehicle salesperson's employment is terminated, the license shall be returned to the salesperson.

(c) Every vehicle salesperson licensed pursuant to this Article shall report in writing to the department every change of residence address within five days of the change.

(d) Any person currently or previously licensed under this Article who no longer resides at the address last filed with the department may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that residence, unless the person has notified the department in writing of another address where service may be made.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Term of License: Renewal

11814. (a) Every original vehicle salesperson's license issued, and every vehicle salesperson's license renewed pursuant to subdivision (b), shall be valid for a period of three years from the date of issuance unless canceled, suspended, or revoked by the department.

(b) Renewal of a vehicle salesperson's license may be made prior to the expiration date. In no event may a vehicle salesperson renew his or her license after the date of expiration.

(c) A salespersons license may be renewed by mail if that license was not renewed by mail for the immediately preceding period.

(d) A salesperson shall obtain a duplicate license when the original is either lost or mutilated.

Amended Ch. 1243, Stats. 1992. Effective September 30, 1992.

Unlawful Uses of Salesperson's License

11819. It is unlawful for any person:

(a) To lend a salesperson's license to any other person or knowingly permit its use by another.

(b) To display or represent any salesperson's license not issued to the person as being his or her license.

(c) To fail or refuse to surrender to the department, upon its lawful demand, any salesperson's license which has been suspended, revoked or canceled.

(d) To permit any unlawful use of a salesperson's license issued to him or her.

(e) To photograph, photostat, duplicate, or in any way reproduce any salesperson's license or facsimile thereof in such a manner that it could be mistaken for a valid license, or to display or have in possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Fees

11820. The following fees shall be paid to the department:

(a) Except as provided by Section 42231, a nonrefundable fee for the original issuance of a license, fifty dollars (\$50).

(b) Fee for license renewal, fifty dollars (\$50).

(c) Fee for a duplicate license, fifteen dollars (\$15).

Amended Ch. 90, Stats. 1990. Effective May, 9, 1990.

Automatic Cancellation

11822. The vehicle salesperson's license or any permit provided in this Article shall be automatically canceled upon the failure of a licensee to pay the required fees or to file an application for renewal of the license or permit before the date of expiration of the current license or permit.

Amended Ch. 499, Stats. 1984. Effective January 1, 1985.

Department's Authority After Suspension, Expiration, or Cancellation of License

11824. The suspension, expiration, or cancellation of a vehicle salesperson's license issued under this Article does not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or cancelled license as provided in Section 11806, and the department's decision that the license should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license authorized by this division to that licensee.

Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.

Article 3. Representatives

(Added Ch. 996, Stats. 1973. Operative July 1, 1974)

License or Temporary Permit Required

11900. It shall be unlawful for any person to act as a representative on or after January 1, 1974*, without having first procured a license or temporary permit issued by the department or when such license or temporary permit has been canceled, suspended, revoked, or invalidated or

has expired.

Amended Ch. 384, Stats. 1974. Operative July 5, 1974, by terms of urgency clause.

NOTE: *This must be interpreted to mean “July 5, 1974” since a statute cannot become operative prior to its effective date.

Application Forms

11901. The department shall prescribe and provide forms to be used for application for licenses to be issued under the terms and provisions of this chapter and require of such applicants, as a condition precedent to issuance of such license, such information touching on and concerning the applicant's character, honesty, integrity and reputation as it may consider necessary. Every application for a representative's license shall contain, in addition to such information as the department may require, a statement of the following facts:

(a) Name and address of the applicant.

(b) Whether the applicant has ever had a court judgment rendered for which he has been liable as a result of his activity in connection with an occupation licensed under this chapter and whether such judgment remains unpaid or unsatisfied.

(c) Whether the applicant ever had a license, issued under the authority of this chapter, revoked, suspended, or subjected to other disciplinary action and whether the applicant was ever a partner in a partnership or an officer, director, or stockholder in a corporation licensed under the authority of this chapter, the license of which was revoked, suspended, or subjected to other disciplinary action.

(d) Name, address, and license number of the manufacturer, manufacturer branch, distributor, or distributor branch employing the applicant.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Authority to Issue, Refuse to Issue, Suspend, or Revoke License or Temporary Permit

11902. (a) The department shall issue a representative's license when it finds and determines that the applicant has furnished the required information, and that the applicant intends in good faith to act as a representative and has paid the fees required by Sections 9262 and 11723.

(b) The department may refuse to issue, or may suspend or revoke, a license for any of the following reasons:

(1) The information in the application is incorrect.

(2) The applicant or licensee has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(3) The applicant or licensee has outstanding an unpaid final court judgment rendered in connection with an activity licensed under this chapter.

(4) The applicant or licensee was previously the holder of, or was a business representative of a business which was the holder of, a license and certificate issued under this chapter which were revoked for cause and not reissued by the department or which were suspended for cause and the terms of suspension have not been fulfilled.

(5) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of

suspension have not been fulfilled.

(6) The applicant or licensee has committed any act prohibited by Section 11713.2 or 11713.3.

(c) Pending the determination of the department that the applicant has met the requirements of this chapter, it may issue a temporary permit to any person applying for a representative's license. The temporary permit shall permit the operation by the representative for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for a license. The temporary permit is invalid after the applicant's license has been issued or refused.

(d) The department may issue a probationary representative's license based upon the existence of any circumstance set forth in subdivision (b), subject to conditions to be observed in the exercise of the privilege granted, either upon application for the issuance of a license or upon application for the renewal of a license. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be those which, in the judgment of the department, are in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

Amended Sec. 52, Ch. 877, Stats. 1998. Effective January 1, 1999.

Interim Refusal to Issue or Suspension of License

11902.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction with the meaning of this section.

(b) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

Suspension, Revocation, Refusal to Issue—Hearings, Reapplication

11903. (a) If the department suspends or revokes a representative's license, the licensee shall be entitled to an appropriate hearing. Such hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) If the department issues or renews a representative's license requiring conditions of probation or if the department refuses to issue such license, the applicant shall be entitled to demand in writing a hearing as hereinabove provided before the director or his representative within 60 days after notice of refusal or issuance of the probationary license.

(c) A person whose representative's license has been revoked or whose application for a license has been denied may reapply for such license after a period of not less than one year has elapsed from the effective date of the

decision revoking the license or denying the application; provided, however, that if such decision was based upon paragraph (3) or (4) of subdivision (b) of Section 11902, an earlier reapplication may be made accompanied by evidence satisfactory to the department that such grounds no longer exist.

Amended Ch. 934, Stats. 1976. Effective January 1, 1977.

Compromise Settlement Agreement

11903.5. (a) After the filing of an accusation under this article, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not exceed five hundred dollars (\$500) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this article.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refile the accusation or imposing license sanctions.

Added Ch. 1022, Stats. 1985. Effective January 1, 1986.

Expiration of Representative License

11904. Every representative's license issued hereunder shall expire at midnight on the 30th day of June of each year.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Renewal of Representative License

11905. Every application for the renewal of a representative's license which expires on the 30th day of June shall be made by the person to whom issued between June 1st and midnight of June 30th preceding such expiration date and shall be made by presenting the application form provided by the department and by payment of the full annual renewal fee for such license.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Automatic Cancellation

11907. The representative's license, or any permit provided for in this chapter, shall be automatically canceled upon the failure of the licensee to file an application for renewal of the license or permit before July 1st

following the expiration date of the current license or permit.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Department's Authority After Suspension, Expiration or Cancellation of License

11908. The suspension, expiration, or cancellation of the representative's license provided for in this chapter shall not prevent the filing of an accusation for revocation or suspension of the suspended, expired, or canceled license as provided in Section 11903, and the department's decision that such license should be suspended or revoked. Such determination may be considered in granting or refusing to grant any subsequent license authorized by Division 5 (commencing with Section 11100) to such licensee.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Posting of License

11909. Upon issuance by the department to the licensee, the license provided in this Article shall be immediately delivered to and posted in a place conspicuous to the public at the place of business of the manufacturer, manufacturer's branch, distributor, distributor's branch from which the representative is directly supervised and shall be continuously exhibited in such place while the representative is employed by such employer.

In the event a representative's employment is terminated, the license shall be forwarded to the department by the manufacturer, manufacturer's branch, distributor, distributor's branch not later than the end of the third business day after termination.

Added Ch. 384, Stats. 1974. Operative July 5, 1974.

CHAPTER 5. SALE OF HOUSECARS

(Added Ch. 853, Stats. 1980. Effective January 1, 1981)

First-Stage and Second-Stage Manufacturer, Defined

11930. As used in this chapter:

(a) "First-stage manufacturer" with reference to a housecar means the manufacturer of the engine, chassis, and drive train of the vehicle.

(b) "Second-stage manufacturer" means the installer of the structure and equipment permanently upon the engine, chassis, and drive train of the vehicle rendering the vehicle complete and suitable for human habitation and ready for delivery to the dealer or the buyer.

Added Ch. 853, Stats. 1980. Effective January 1, 1981.

Housecar Warranty

11931. (a) The dealer shall give the purchaser of a new housecar a list of every express warranty, of which he has notice, that has been issued on the housecar, or a part thereof, by the first-stage manufacturer, the second-stage manufacturer, the dealer, or any other party. The dealer shall also give the purchaser a copy of each warranty.

(b) The purchaser shall sign the list as an acknowledgment that he has received each warranty listed. The dealer shall sign to signify that all express warranties applicable to the housecar appear on the list. Both the purchaser and the dealer shall retain a copy of the list.

(c) Violation of this section is an infraction.

Added Ch. 853, Stats. 1980. Effective January 1, 1981.

CHAPTER 7. SALE OF AUTOMOBILE PARTS

(Added Ch. 678, Stats. 1975. Effective January 1, 1976, formerly Chapter 5)

Investigation and Enforcement

12000. The Bureau of Automotive Repair in the Department of Consumer Affairs shall enforce the provisions of this chapter. The Bureau of Automotive Repair shall investigate and inspect retail outlets to insure compliance with this chapter.

Repealed and added Ch. 678, Stats. 1975. Effective January 1, 1976.

Invoice: Required Information

12001. (a) Any person who sells and installs new parts in passenger cars, in the ordinary course of his business, shall provide the customer with an invoice which identifies by brand name, or other comparable designation, the part or parts installed.

(b) Any person who sells and installs used or factory rebuilt parts in passenger cars, in the ordinary course of his business, shall provide the customer with an invoice which specifically designates the used part or parts installed.

(c) This section shall not apply to any fitting or other device necessary to the installation of any new, used or factory rebuilt part subject to the provisions of this section.

Repealed and added Ch. 678, Stats. 1975. Effective January 1, 1976.

Defective Vehicle Parts

12002. No person shall knowingly manufacture, sell, or install in any vehicle, any vehicle part which, under the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C., Sec. 1381 et seq.), is, or has been, determined to be defective and subject to customer notification or recall.

Repealed and added Ch. 678, Stats. 1975. Effective January 1, 1976.

Violation

12003. Any violation of this chapter shall be a misdemeanor.

Repealed and added Ch. 678, Stats. 1975. Effective January 1, 1976.

CHAPTER 8. PRIVATE PARTY VEHICLE MARKETS

(Added Ch. 525, Stats. 1978. Effective January 1, 1979)

Regulation of Private Party Vehicle Markets

12101. Any transaction which is regulated by this chapter shall not be subject to the provisions of Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code, regulating transactions in identifiable secondhand tangible personal property. No person shall be considered a "secondhand dealer" within the meaning of Section 21661 of the Business and Professions Code because of activities regulated by this chapter.

Added Ch. 525, Stats. 1978. Effective January 1, 1979.

Definitions

12102. The following definitions apply with respect to this chapter:

(a) "Private party vehicle market" means any event conducted under any of the following circumstances:

(1) An event at which two or more vehicles are offered or displayed for sale or exchange and a fee is charged for the privilege of offering or displaying the vehicles for sale or exchange.

(2) An event at which a fee is charged to prospective buyers for admission to the area where vehicles are offered or displayed for sale or exchange.

(3) An event, other than one conducted by a person listed in subdivision (a) of Section 286, at which used vehicles are offered or displayed for sale or exchange if such event is held at the same place more than six times in any 12-month period, regardless of the number of persons offering or displaying vehicles or the absence of fees.

(b) "Private party vehicle market operator" means any person who controls, manages, conducts, or otherwise administers a private party vehicle market.

(c) "Vendor" means any person who exchanges, sells, or offers for sale or exchange any vehicle at a private party vehicle market.

(d) Any event arranged or sponsored, or both, by a dealer licensed pursuant to Division 5 (commencing with Section 11100) shall not be considered a private party vehicle market.

Added Ch. 525, Stats. 1978. Effective January 1, 1979.

Records

12103. (a) Every private party vehicle market operator shall maintain a record, for not less than one year, of all of the following information:

(1) The name of each vendor selling, exchanging, or offering for sale or exchange, any vehicle at a private party vehicle market.

(2) The vendor's driver's license number.

(3) The registration number assigned to the vehicle and the vehicle identification number.

(4) The number of the vehicle's current and valid certificate of compliance.

(5) The make, model, and color of the vehicle.

(b) That information shall be made available, upon request, to any peace officer and to any employee of the department designated by the director.

Amended Ch. 1054, Stats. 1991. Effective January 1, 1992.

Forms

12104. (a) Every private party vehicle market operator shall supply, to vendors, sufficient forms which are necessary to comply with Section 5900.

(b) Every private party vehicle market operator shall supply, to vendors, all information made available by the department to the general public regarding all existing provisions of law pertaining to requirements for the transfer of vehicle ownership and registration between parties who are not dealers.

Added Ch. 525, Stats. 1978. Effective January 1, 1979.

CHAPTER 9. TOWING

Towing Service: Unlawful Acts: Penalties

12110. (a) Except as provided in subdivision (b), no towing service shall provide and no person or public entity shall accept any direct or indirect commission, gift, or any compensation whatever from a towing service in consideration of arranging or requesting the services of a tow truck. As used in this section, "arranging" does not include the activities of employees or principals of a provider of towing services in responding to a request for towing services.

(b) Subdivision (a) does not preclude a public entity otherwise authorized by law from requiring a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity. However, the fee in those cases may not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program.

(c) Any towing service or any employee of a towing service that accepts or agrees to accept any money or anything of value from a repair shop and any repair shop or any employee of a repair shop that pays or agrees to pay any money or anything of value as a commission, referral fee, inducement, or in any manner a consideration, for the delivery or the arranging of a delivery of a vehicle, not owned by the repair shop or towing service, for the purpose of storage or repair, is guilty of a misdemeanor, punishable as set forth in subdivision (d). Nothing in this subdivision prevents a towing service from towing a vehicle to a repair shop owned by the same company that owns the towing service.

(d) Any person convicted of a violation of subdivision (a) or (c) shall be punished as follows:

(1) Upon first conviction, by a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If the violation of subdivision (a) or (c) is committed by a tow truck driver, the person's privilege to operate a motor vehicle shall be suspended by the department under Section 13351.85. The clerk of the court shall send a certified abstract of the conviction to the department. If the violation of either subdivision (a) or (c) is committed by a tow truck driver, the court may order the impoundment of the tow truck involved for not more than 15 days.

(2) Upon a conviction of a violation of subdivision (a) or (c) that occurred within seven years of one or more separate convictions of violations of subdivision (a) or (c), by a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the violation of subdivision (a) or (c) is committed by a tow truck driver, the person's privilege to operate a motor vehicle shall be suspended by the department under Section 13351.85. The clerk of the court shall send a certified abstract of the conviction to the department. If the violation of either subdivision (a) or (c) is committed by a tow truck owner, the court may order the impoundment of the tow truck involved for not less than 15 days but not more than 30 days.

Amended Ch. 675, Stats. 1994. Effective January 1, 1995. Supersedes Ch. 268.

Amended Sec. 1, Ch. 641, Stats. 2000. Effective January 1, 2001.

Business License Tax

12111. (a) Except as provided in subdivision (b), no city or city and county may impose a business license tax for revenue-raising purposes on the operation of a tow truck in its jurisdiction if the vehicle tower maintains no fixed place of business within the boundaries of the city or city and county.

(b) A city or city and county may impose a business license tax upon a vehicle tower doing business within its jurisdiction who has no fixed place of business therein, if the license tax is graduated according to gross receipts attributable to work done within the city or city and county.

Amended Ch. 924, Stats. 1988. Effective January 1, 1989.

CHAPTER 10. SALES OF VEHICLES BY PRIVATE OWNERS

(Added Ch. 668, Stats. 1986. Effective January 1, 1987.)

Sales of Vehicles

12120. Only a dealer, a person described in Section 286, or the registered owner of record shall sell or offer for sale a vehicle of a type required to be registered pursuant to Division 3 (commencing with Section 4000) or identified pursuant to Division 16.5 (commencing with Section 38000), except as provided in Section 12121.

Added Ch. 668, Stats. 1986. Effective January 1, 1987.

Exemptions

12121. (a) Section 12120 does not apply to a dealer licensed pursuant to Chapter 4 (commencing with Section 11700) when acting under authority of the license, or to his or her authorized agent.

(b) Section 12120 does not prohibit the sale of a vehicle by any of the following persons not engaged in the business of selling vehicles:

(1) Anyone related by blood, adoption, or marriage to the registered owner.

(2) The receiver, administrator, executor, guardian, or other person appointed by, or acting under, a judgment or order of any court.

(3) The trustee of a trust in which the vehicle is registered as an asset.

(4) Any public officer in the performance of his or her official duties.

(5) An attorney on behalf of a client who is the registered owner.

(6) The owner, officer, or designated representative of a business in whose name the vehicle is registered.

(7) The legal owner as shown on the certificate of ownership.

(8) A person who has prior written authorization from the registered owner of the vehicle, and that person does not receive or expect to receive a commission, money, brokerage fees, profit, or any other thing of value from either the seller or purchaser of the vehicle.

(9) An insurer selling the salvage of one of its insured's vehicle or the stolen vehicle of one of its insured which has been recovered.

Added Ch. 668, Stats. 1986. Effective January 1, 1987.